

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
LESHAWN LAWSON,  
Defendant.

Case No. 15-cr-00119-PJH-1

**ORDER ON DEFENDANT'S MOTIONS**

Doc. nos. 39, 40, 41, 42, 43, 44, 45

On February 3, 2016, this matter came on for hearing on the following motions filed by defendant LeShawn Lawson: motions to suppress evidence obtained pursuant to warrants authorizing the installation of GPS tracking devices on a Captiva (doc. no. 39), Equinox (doc no. 40), and Bentley (doc. no. 42); motion to suppress evidence obtained pursuant to warrant to search a UPS package (doc. no. 41); motion to suppress evidence from unlawful stop and prolonged detention (doc. no. 43); motion to suppress incriminating statements (doc. no. 44); motion for an order requiring disclosure of identities of confidential sources and informants (doc. no. 45).

Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and for the reasons stated on the record and set forth below, the court DENIES the motions to suppress evidence obtained pursuant to the warrants authorizing GPS tracking devices and parcel search; and DENIES the motion for disclosure of confidential sources and informants. The court GRANTS IN PART defendant's request for an evidentiary hearing on certain issues raised by the motion to suppress based on unlawful stop and prolonged detention and the motion to suppress

1 incriminating statements; DEFERS RULING on those limited issues as further discussed  
2 below; and otherwise DENIES IN PART those motions.

3 **I. Background**

4 In a single count indictment, defendant LeShawn Lawson is charged with one  
5 count of violation of 21 U.S.C. § 841(a)(1) for possession with intent to distribute cocaine.  
6 Doc. no. 5. Defendant moves to suppress evidence seized pursuant to four separate  
7 warrants issued during the course of the investigation, starting in October 2014, that led  
8 to his arrest. He also seeks to compel disclosure of the identities of the confidential  
9 informants (CI) and sources of information (SOI) who provided information relied upon in  
10 the probable cause affidavits. He further challenges the admissibility of incriminating  
11 statements and evidence obtained during the traffic stop leading to his arrest on February  
12 6, 2015.

13 **A. Captiva Warrant**

14 On October 22, 2014, the Cincinnati Police Department obtained a warrant to  
15 install a GPS tracker on defendant's rental car, a red 2015 Chevrolet Captiva, when he  
16 visited Ohio. Police officer Ryan Robertson submitted an affidavit in support of the  
17 warrant application, summarizing information obtained from Task Force Officer (TFO)  
18 Ken Baker of the Drug Enforcement Administration (DEA) during the course of an  
19 ongoing investigation of defendant for drug trafficking. Consolidated Opp. Mots.  
20 Suppress Search Warrants (doc. no. 52) ("Consolidated Opp."), Ex. E at LAWSON 0272-  
21 0273 ("Captiva affidavit"). Based on his training and experience, Officer Robertson  
22 stated that drug traffickers utilize rental vehicles to store, maintain and transport narcotics  
23 and/or proceeds, and believed that Lawson was involved in interstate distribution of  
24 marijuana. *Id.* On October 22, 2014, at 9:45, the Hamilton County Municipal Court  
25 issued a search warrant to install a covert GPS device on the Captiva. *Id.* at LAWSON  
26 0274 ("Captiva warrant"). The search warrant return, including information on a CD, was  
27 filed October 23, 2014.

**B. Equinox Warrant**

On December 3, 2014, the Cincinnati police obtained a search warrant to install a GPS tracker on defendant's rental car while he was visiting Cincinnati, a red 2015 Chevrolet Equinox. Officer Robertson's Equinox affidavit repeated the background facts asserted in the Captiva affidavit, and added information based on surveillance of defendant on October 22, 2014 leading up to the date of the Equinox affidavit. Consolidated Opp. (doc. no. 52), Ex. D at LAWSON-0287 ("Equinox affidavit"). The Hamilton County Municipal Court issued the Equinox GPS warrant on December 3, 2014 at 9:28 am ("Equinox warrant"). The search warrant return was filed December 4, 2014.

**C. UPS Parcel Warrant**

Using the GPS tracking device on the Equinox, law enforcement tracked defendant and observed him entering a UPS store to ship a package. Cincinnati police then used a canine to sniff the package, which indicated for drugs. On December 3, 2014, Officer Robertson applied for a search warrant for the package that defendant dropped off at the UPS store in Cincinnati. Consolidated Opp. (doc. no. 52), Ex. C at LAWSON 0277-278 ("UPS affidavit"). The municipal court issued the parcel warrant at 6:48 pm on December 3, 2014 ("UPS warrant"). Upon searching the UPS package pursuant to the UPS warrant on December 3, 2014, law enforcement discovered and seized \$336,920 in cash from the package that defendant had shipped. No charges were filed.

**D. Bentley GPS Tracking Warrant**

On December 29, 2014, Magistrate Judge Bernard Zimmerman issued a tracking warrant to install a GPS tracker on defendant's 2006 white Bentley ("Bentley Warrant"), based on the supporting affidavit by DEA Agent Pettie Winston. Sealed Exhibit B to Consolidated Opp. ("Sealed Winston Affidavit"). This affidavit is sealed from the public record but has been provided to defense counsel. The Bentley warrant authorized agents to install the GPS tracking device within 10 days and to continue use for 45 days. Consolidated Opp. (doc. no. 52), Ex. A. Defendant represents that the DEA installed a

1 GPS tracking device on the Bentley on December 30, 2014, and again installed a GPS  
2 device on January 23, 2015. Mot. Suppress Bentley Warrant (doc. no. 42) at 12.

3 **E. Traffic Stop**

4 During the evening of February 5, 2015, DEA agents observed that the tracker  
5 data for the Bentley showed that defendant had traveled from the Bay Area to Los  
6 Angeles. Opp. Mot. Suppress Unlawful Traffic Stop, Ex. B (doc. no. 51) ("Winston Decl.")  
7 ¶ 3. On February 6, 2015, at about 7:15 a.m., DEA Agent Winston monitored the GPS  
8 tracker data which indicated that defendant was driving back to the Bay Area from Los  
9 Angeles. *Id.* ¶ 4. Agent Winston telephoned Livermore Police Detective Al Grejada,  
10 informed him of the DEA's investigation of defendant and the active GPS tracker on  
11 defendant's Bentley with a description of the Bentley, and requested that an officer from  
12 the Livermore Police Department perform a traffic stop on the Bentley if it drove through  
13 their jurisdiction. *Id.*

14 On February 6, 2015, at about 8:30 a.m., Livermore Police Officer Matthew  
15 Williams received a call from Detective Grejada, who informed Officer Williams of the  
16 DEA investigation of defendant and asked him to perform a traffic stop on defendant's  
17 Bentley if located while it passed through the Livermore area. Opp. Mot. Suppress  
18 Unlawful Traffic Stop, Ex. A (doc. no. 51) ("Williams Decl.") ¶ 2. At about 9:30 a.m.,  
19 Officer Williams observed a white Bentley traveling without any license plates on the  
20 vehicle, in violation of California Vehicle Code § 5200, and traveling at approximately 75  
21 MPH in a posted 55 MPH construction zone, in violation of Vehicle Code § 22349(a).  
22 Opp. Mot. Suppress Unlawful Stop (doc. no. 51), Ex. A-1 (Arrest Report). Officer  
23 Williams pulled over the Bentley, driven by defendant, for a traffic stop. With the Bentley  
24 stopped, Officer Williams exited his patrol car and contacted defendant as he sat in the  
25 driver's seat. *Id.* In a late-filed declaration, defendant states that Officer Williams  
26 approached defendant's car with his hand on his gun, spoke in a commanding and  
27 forceful tone, and ordered defendant to hand over the keys and roll down all the windows  
28 of the vehicle. Lawson Decl. (doc. no. 60) ¶ 9.

1 As reported by Officer Williams, he asked defendant several questions while  
2 holding a casual conversation. According to the arrest report, Officer Williams asked  
3 defendant if he would mind having his person and vehicle searched, and defendant  
4 responded, "Go ahead, I don't have anything in my car." Arrest Report (doc. no. 51) at  
5 LAWSON-0031. Defendant disputes that he ever gave anyone consent to enter or  
6 search any part of his vehicle. Lawson Decl. (doc. no. 60) ¶ 11.

7 Officer Williams requested another officer for back-up and asked defendant to step  
8 out of the vehicle. According to the arrest report, Officer Williams conducted a consent  
9 search of defendant's person when he stepped out of the car. Officer Williams located a  
10 large amount of U.S. currency in defendant's right front pants pocket and left rear pants  
11 pocket. After searching defendant's person, Officer Williams asked him to walk to the  
12 sidewalk and sit on the curb. As Officer Williams was walking with defendant to the  
13 sidewalk, Officer Grejada arrived on the scene. Officer Williams then commenced a  
14 search of the vehicle and searched the inside of a duffle bag on the front passenger seat  
15 that contained a large amount of cash in \$100 bills, as well as a camera and two cell  
16 phones. Arrest Report (doc. no. 51) at LAWSON-0031-0032.

17 Officer Williams reported that when he had finished searching the interior of the  
18 vehicle, he asked defendant how to open the trunk, while holding the keys to the vehicle.  
19 Officer Williams saw the trunk release on the key fob and pushed it to open the trunk,  
20 where he found another duffle bag containing bricks of suspected drugs, as well as  
21 license plates issued for the Bentley. Arrest Report (doc. no. 51) at LAWSON-0032;  
22 Williams Decl. ¶ 4. Defendant was arrested and transported to the Livermore Police  
23 station, where Officer Williams read defendant his *Miranda* rights. Williams Decl. ¶ 5.

## 24 **II. Motions to Suppress Evidence Obtained Pursuant to Warrants**

25 Defendant moves to suppress evidence seized pursuant to the three GPS tracking  
26 warrants (Captiva, Equinox and Bentley) and the UPS parcel warrant. Doc. nos. 39-42.  
27 The government filed a consolidated opposition to those four motions to suppress, which  
28 does not challenge defendant's standing to bring those motions. Doc. no. 52. Defendant

1 filed a timely reply, doc. no. 56, and, after the motion hearing, filed a late declaration, doc.  
 2 no. 60, which the court will consider to the extent it is relevant to defendant's request for  
 3 an evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154 (1978).

#### 4 **A. Legal Standard**

##### 5 **1. Probable Cause Requirement**

6 "The traditional standard for review of an issuing magistrate's probable cause  
 7 determination has been that so long as the magistrate had a substantial basis for  
 8 concluding that a search would uncover evidence of wrongdoing, the Fourth Amendment  
 9 requires no more." *United States v. Terry*, 911 F.2d 272, 275 (9th Cir. 1990) (quoting  
 10 *Illinois v. Gates*, 462 U.S. 213, 236 (1982)) (internal citations and marks omitted). The  
 11 test to be applied is whether, using common sense and considering the totality of the  
 12 circumstances, a magistrate judge can reasonably conclude that there is a "fair  
 13 probability" that contraband or evidence of a crime will be found in a particular place.  
 14 *Illinois v. Gates*, 462 U.S. 213, 238 (1983). "For a finding of probable cause to satisfy this  
 15 nexus requirement, there must be a fair probability both that a crime has been committed  
 16 and that evidence of its commission will be found in the location to be searched." *United*  
 17 *States v. Tan Duc Nguyen*, 673 F.3d 1259, 1263 (9th Cir. 2012) (citations omitted). "[A]  
 18 magistrate judge must look to the totality of the circumstances to determine whether the  
 19 supporting affidavit establishes probable cause." *United States v. Alvarez*, 358 F.3d  
 20 1194, 1203 (9th Cir. 2003). The issuing judge's probable cause finding is entitled to  
 21 "great deference." *United States v. Grant*, 682 F.3d 827, 832 (9th Cir. 2012) (citation and  
 22 internal marks omitted).

23 Ordinarily, only evidence that is obtained in violation of a warrant is suppressed.  
 24 *United States v. Tamura*, 694 F.2d 591, 597 (9th Cir. 1982). "However, in cases where  
 25 there is a 'flagrant disregard' for the terms of the warrant, the district court may suppress  
 26 all of the evidence, including evidence that was not tainted by the violation." *United*  
 27 *States v. Chen*, 979 F.2d 714, 717 (9th Cir. 1992) (quoting *United States v. Medlin*, 842  
 28 F.2d 1194, 1199 (10th Cir. 1988)). "This extraordinary remedy should be used only when

the violations of the warrant's requirements are so extreme that the search is essentially transformed into an impermissible general search." *Id.*

## 2. Evidentiary Hearing

There is "a presumption of validity with respect to the affidavit supporting [a] search warrant." *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978). However, in *Franks*, the Supreme Court held that:

[W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request.

438 U.S. at 155-56. A *Franks* hearing is held to investigate the veracity of the affiant. *United States v. Dozier*, 844 F.2d 701, 704 (9<sup>th</sup> Cir. 1988).

A party moving for a *Franks* hearing bears the burden of proof and must make a substantial showing to support the elements entitling him to a *Franks* hearing. *United States v. Chavez-Miranda*, 306 F.3d 973, 979 (9<sup>th</sup> Cir. 2002). Under Ninth Circuit authority, the court must conduct a *Franks* hearing to allow a defendant to challenge the sufficiency of an affidavit if he makes "a substantial preliminary showing that (1) the affidavit contains intentionally or recklessly false statements, and (2) the affidavit purged of its falsities would not be sufficient to support a finding of probable cause." *United States v. Stanert*, 762 F.2d 775, 780 (9<sup>th</sup> Cir.), *amended*, 769 F.2d 1410 (9<sup>th</sup> Cir. 1985) (citations and internal marks omitted).

## B. Captiva Warrant

### 1. Probable Cause

Defendant challenges the use of a GPS tracking device on his rental car (Captiva) for lack of probable cause to support issuance of the warrant for its use on October 22, 2014. This was the first of three GPS tracking warrants issued against defendant. The parties do not dispute that installation of a GPS device on a vehicle constitutes a search within the meaning of the Fourth Amendment. *United States v. Jones*, 132 S. Ct. 945,



1 949 (2012). Defendant argues that the Captiva warrant lacked probable cause and  
2 tainted all the subsequent searches and seizures.

3 Defendant contends that the Captiva warrant suffers from conclusory statements  
4 that are insufficient to establish probable cause.

5 (a) conclusory statements that the affiant believed that the Captiva was  
6 used to transport and conceal marijuana.

7 Read in context, Officer Robertson stated this belief based on the specific, detailed facts  
8 obtained during the course of the investigation, including defendant's prior criminal  
9 history, including four prior drug offenses, two of which were related to marijuana (in 2002  
10 and 2004), and that he had been on probation since February 2014 from a 2009 drug  
11 trafficking conviction. Officer Robertson also noted in the Captiva affidavit that defendant  
12 travelled between San Francisco and Cincinnati about 2 or 3 times a month since  
13 January 2014, and that he used wire transfers and money orders to move money to San  
14 Francisco. The affidavit notes that almost all the wire transfer amounts are under the  
15 federal mandatory reporting limit to avoid reporting requirements, demonstrating attempts  
16 to evade law enforcement and indicative of drug trafficking.

17 Defendant points out that the affiant fails to specify that defendant's arrest by DEA  
18 in 2013 at the Cincinnati airport on an "open Drug Trafficking warrant from Hamilton  
19 County, Ohio" was actually pursuant to a bench warrant issued for a 2009 drug  
20 conviction. Mot. Suppress Equinox Warrant (doc. no. 40) at 5-6. Defendant does not  
21 articulate any material difference between an open warrant and a bench warrant, which  
22 was issued for the 2009 drug conviction. Further, defendant does not dispute that he had  
23 a 2009 drug trafficking conviction, and the Captiva affidavit clearly states that defendant  
24 was not sentenced on the 2009 drug trafficking conviction until February 2014, when he  
25 was sentenced to 3 years of probation.

26 Defendant also takes issue with the statement in the Captiva affidavit that the DEA  
27 conducted a consensual search of his person and carry-on bag at the Cincinnati airport  
28 on October 19, 2013, arguing that he never gave consent to the search and that no



1 charges were brought against him based on the cash that was seized that day. See  
2 Lawson Decl. (doc. no. 60) ¶ 13. The legality of that search is not properly raised before  
3 this court, particularly in light of defendant's concession that he was not charged based  
4 on evidence from that search and that he recovered the \$29,147 that was seized from  
5 him. *Id.* ¶ 14.

6 (b) conclusory statements that the affiant "discovered" that defendant used  
7 wire transfers, without identifying any specific instance where or when these  
8 occurred.

9 Officer Robertson did not purport to have personal knowledge of these wire transfers or  
10 money order purchases, but refers to knowing of this activity "through departmental  
11 resources." The government points out that it has produced documents showing that  
12 defendant used wire transfers and money orders to move funds from Ohio to California,  
13 although it does not appear from the record that this evidence was submitted with the  
14 search warrant application. Consolidated Opp. (doc. no. 52) at 16. Defendant cites no  
15 authority holding that an affiant may not rely on facts obtained through the police  
16 department during the course of an investigation, and that such information would not be  
17 "reasonably trustworthy" for the issuing judge to rely on to find probable cause.

18 Defendant also seeks an evidentiary hearing to challenge the affiant's assertion  
19 that defendant used wire transfers to send money in amounts less than \$10,000 to  
20 California, evidence of which the government has since produced in discovery. Mot.  
21 Suppress Captiva Warrant (doc. no. 39) at 17. The evidence submitted by defendant of  
22 certain wire transfer activity in 2009-2010 and select money orders that appear to be  
23 dated October 2013 and March 2014, does not demonstrate falsity in the Captiva  
24 affidavit's assertion that defendant "uses money orders and multiple wiring locations that  
25 are in and out of state to move proceeds back to the west coast," and that "[a]lmost all of  
26 the amounts Lawson wires are under the federal mandatory reporting limit (\$10,000.00),  
27 demonstrating that he is attempting to evade detection from law enforcement." See  
28 Lawson Decl. ¶¶ 17, 21 and attachments. Although defendant argues that none of the

1 transactions were made in an amount “close to \$10,000,” *id.* ¶ 17, the Captiva affidavit  
2 does not assert that any of the transactions involved an amount just below \$10,000.

3 (c) conclusory statement that the affiant believed that defendant was in  
4 Cincinnati to conduct more money laundering activities possibly derived  
5 from drug trafficking, without giving evidence of money laundering or drug  
6 trafficking.

7 Defendant correctly points out that no evidence of drugs was cited in support of the  
8 Captiva affidavit, but only indicia of drug trafficking based on defendant’s travel pattern  
9 and suspicious financial activity. The affiant indicates, however, that defendant’s  
10 financial activity, involving multiple wire transfers and money orders to San Francisco in  
11 non-reportable amounts, was indicative of money laundering and structuring, and that  
12 this is “done due to the lucrative nature of drug trafficking.” Given defendant’s prior  
13 criminal history involving drug trafficking, as well as the frequent, short trips between San  
14 Francisco and Ohio, under the totality of the circumstances, there was a fair probability  
15 that the financial activity was related to drug trafficking.

16 (d) conclusory statement that affiant believes that defendant is involved in  
17 interstate distribution of marijuana, without any evidence of or reference to  
18 marijuana.

19 As noted above, defendant is correct that there was no physical drug evidence to support  
20 the Captiva warrant, but only indicia of interstate drug trafficking as stated above. The  
21 affiant stated his belief, based on his training and experience, that drug traffickers use  
22 rental cars to store, maintain and transport their illegal narcotics and proceeds.

23 Defendant takes issue with the inference that his pattern of flying to Cincinnati for  
24 short, frequent intervals was suspicious activity, because it is “apparent” that he was  
25 travelling to Ohio for court appearances as a result of his 2009 conviction. He contends  
26 that his travel pattern does not raise even reasonable suspicion, much less probable  
27 cause. He challenges as false the affiant’s statement that defendant purchased a one  
28 way ticket to Cincinnati on October 18, 2013, for travel the next day, arguing that he

1 actually purchased his ticket in advance and changed his travel plans on the day he was  
2 supposed to travel. Mot. Suppress Captiva Warrant (doc. no. 39) at 4. Defendant offers  
3 no factual or evidentiary support for this argument, even in his late-filed declaration. The  
4 government responds that changing an airline ticket usually results in rebooking the  
5 ticket, so that there was no misrepresentation by the affiant. Consolidated Opp. (doc. no.  
6 52) at 22. Defendant does not demonstrate that the affiant would have known that  
7 defendant previously bought his ticket and changed his itinerary for the 2013 trip, or how  
8 this error would have been material to the probable cause determination, particularly  
9 because defendant was arrested at CVG airport on October 19, 2013, on a bench  
10 warrant for a 2009 conviction.

11 Defendant speculates that the affiant relied on a confidential source of information  
12 about defendant's travel booking activity, which defendant assumes was an insider at the  
13 airport ticketing counter. Reply to Consolidated Opp. (doc. no. 56) at 2-3 and n.1. Even  
14 assuming that law enforcement relied on a tipster for this information, the reliability of the  
15 tip was verified by the officer's surveillance at the airport and defendant's actual presence  
16 at CVG, particularly concerning the statement, "On October 21, 2014, TFO Baker learned  
17 Lawson purchased a one way ticket to Cincinnati, Ohio from San Francisco and would be  
18 arriving at the Cincinnati/Northern Kentucky Airport at approximately 8:50 am the  
19 following day, October 22, 2014." Officer Baker then conducted surveillance and  
20 observed defendant arriving at CVG and going to the rental car desk to rent the Captiva  
21 on October 22, 2014.

22 Defendant also suggests that the affiant misled the issuing judge by failing to  
23 mention the fact that defendant was required by court-ordered probation to travel to  
24 Cincinnati, and seeks a *Franks* hearing to challenge this omission. Mot. Suppress  
25 Captiva Warrant (doc. no. 39) at 17. Defendant argues that the affiant insinuated that  
26 defendant was going to Cincinnati for the sole purpose of drug trafficking by failing to  
27 indicate that defendant was travelling for legitimate purposes. Defendant points out that  
28 the officer referred to defendant entering "the juvenile court building" rather than

1 specifying that he entered the “800 Broadway Building” or court-annex, where the  
2 probation department is located. Mot. Suppress Equinox Warrant (doc. no. 40) at 6.  
3 However, the Captiva affidavit dated October 22, 2014, clearly states that defendant was  
4 on probation as of February 2014, and that he went to the juvenile court building at “800  
5 Broadway” in downtown Cincinnati during an earlier trip on October 8, 2014, after which  
6 surveillance was terminated. Thus, on the face of the affidavit, the fact that defendant  
7 was on probation was not omitted, and the affidavit disclosed that defendant entered a  
8 Hamilton County court building during his earlier visit to Cincinnati. On this record, there  
9 was no deliberate misrepresentation or omission of the fact that defendant was on  
10 probation, and a *Franks* hearing is not warranted.

11 If viewed alone, the travel pattern to attend court appearances and meetings with  
12 a probation officer in Cincinnati would not raise a fair probability that a crime was being  
13 committed. But when viewed in the light of the money order purchases and wire transfer  
14 activity, it is reasonable to conclude from the travel pattern to and from Cincinnati that  
15 there is a “fair probability” that contraband or evidence of a crime would be found by  
16 tracking defendant’s rental car. As the government points out, defendant’s argument fails  
17 to acknowledge “that a person can travel to Cincinnati for a court-order[ed] probation visit  
18 in the morning and then spend the afternoon engaging in criminal activity. The two  
19 activities are not mutually exclusive.” Consolidated Opp. (doc. no. 52) at 14.

20 The motion to suppress evidence seized pursuant to the Captiva warrant is  
21 DENIED. In the absence of a preliminary showing of a deliberate falsehood or reckless  
22 disregard for the truth, defendant’s request for a *Franks* hearing to challenge the  
23 statements in the Captiva affidavit is also DENIED.

## 24 2. Taint

25 Defendant argues that use of the GPS tracking of the Captiva is critically  
26 intertwined with the subsequent surveillance of his activities in Ohio, including where he  
27 traveled and with whom he met, which was used in support of the Equinox warrant, which  
28 in turn led to discovery of the UPS package containing \$336,920 in U.S. Currency, which

1 was subsequently cited in support of the Bentley GPS tracking warrant. Defendant also  
2 refers to search warrants obtained by law enforcement after defendant was arrested, to  
3 search defendant's home at 2123 Brandywine Place, Hayward, and for bank accounts at  
4 Wells Fargo; neither the Brandywine Warrant nor Wells Fargo Warrant are the subject of  
5 the motions to suppress, except to the extent that defendant seeks to suppress all  
6 evidence tainted by the illegality of earlier searches. Because the Captiva warrant is  
7 supported by probable cause, however, it is not necessary to reach the issue whether  
8 subsequent search warrants and seizures were tainted by the Captiva warrant.

9 **C. Equinox Warrant**

10 Defendant seeks suppression of all evidence obtained directly or indirectly from  
11 the search warrant issued by the Hamilton County court on December 3, 2014, which  
12 authorized installation of a GPS tracker on defendant's rental car, a red 2015 Chevrolet  
13 Equinox. Defendant contends that the warrant was not supported by probable cause and  
14 contained falsities and misrepresentations. Defendant seeks an evidentiary hearing to  
15 challenge the statements in the warrant affidavit pursuant to *Franks*.

16 **1. Probable Cause**

17 Defendant re-asserts his challenges to the defects in the Captiva warrant affidavit  
18 in support of his motion to suppress the Equinox warrant, which was based on the facts  
19 asserted in the Captiva warrant (discussed in section II.B, above), plus information  
20 obtained as a result of the Captiva warrant: that on October 22, 2014, defendant went to  
21 the juvenile court building for a scheduled probation visit, as confirmed by the probation  
22 officer after the visit; that Task Force Officer Baker installed a GPS device on the Captiva  
23 while defendant was meeting with his probation officer; that investigators tracked  
24 defendant throughout the day and learned of three local associates (Garnett, Blair and  
25 Jones) who had local drug histories, two of whom (Garnett and Blair) were known to law  
26 enforcement as local large scale narcotics distributors from prior investigations. The  
27 Equinox affidavit also asserted additional information provided to Task Force Officer  
28 Baker by the DEA in Oakland during November 2014, indicating that defendant was

1 sending cocaine and heroin to Cincinnati using parcel services, and travelling to  
2 Cincinnati to collect money. At the same time, a confidential source contacted TFO  
3 Baker and confirmed that Garnett is a large scale cocaine and heroin distributor in the  
4 Cincinnati area. Equinox Affidavit (doc. no. 52) at LAWSON 287.

5 **a. Three Associates**

6 Defendant challenges the factual assertions that the three “associates” were  
7 known drug dealers as conclusory, and notes that the government has not provided any  
8 discovery about their suspected drug trafficking because the investigations are ongoing.  
9 Mot. Suppress Equinox Warrant (doc. no. 40) at 7. Defendant notes that the affidavit fails  
10 to state that during the investigation, defendant was observed meeting the three  
11 associates at a restaurant for lunch, and that Garnett and Blair were later identified during  
12 a traffic stop after leaving the restaurant but no illegal activity was discovered. Also,  
13 defendant and Garnett were observed at an apartment building, and defendant and  
14 Jones were observed later at another residence and seen hugging, but no illegal activity  
15 was observed at any point. *Id.* at 7-8. Thus, defendant contends that the affiant  
16 deliberately misled the issuing judge by falsely characterizing the three companions as  
17 “associates,” falsely stating that they had local drug histories, and by omitting the fact that  
18 they were not observed in any criminal activity. *Id.* at 20.

19 Although the government has not come forward with evidence to prove that the  
20 three companions had criminal histories involving drug offenses, it was not necessary for  
21 the affiant, who was a law enforcement officer, to present the issuing judge with criminal  
22 records to substantiate the assertion that all three men had local drug histories and that  
23 Garnett and Blair were known to local law enforcement as large scale distributors based  
24 on prior investigations. The affiant further indicates that a confidential source contacted  
25 TFO Baker and confirmed that Garnett was a “large scale cocaine and heroin distributor  
26 operating within the greater Cincinnati, Ohio area.” Furthermore, the Equinox affidavit  
27 does not characterize defendant’s meeting with Garnett, Blair and/or Jones as engaging  
28 in illegal activity. In the context of the ongoing investigation, the affiant’s use of the term

1 “associates” in the Equinox affidavit is not misleading and does not warrant an  
2 evidentiary hearing pursuant to *Franks*.

3 **b. Confidential Sources**

4 Defendant also challenges the affiant’s statement that DEA agents informed TFO  
5 Baker that defendant was sending cocaine and heroin packages to Cincinnati by UPS  
6 and then travelling to Cincinnati to collect the sales proceeds, because there were no  
7 facts to support this contention. Defendant contends that the government has not  
8 produced information to corroborate the affidavit, noting that the only report produced by  
9 the government refers to information provided by a confidential source which does not  
10 specifically refer to defendant shipping packages of heroin and cocaine to Cincinnati.  
11 Mot. Suppress Equinox Warrant (doc. no. 40) at 21. The report cited by defendant states  
12 that the source of information (SOI) indicated that “Lawson is distributing large amounts  
13 of marijuana, cocaine and heroin in the San Francisco Bay Area and also shipping the  
14 drugs to multiple different states, including Michigan, Ohio and Tennessee.” *Id.* at 9. The  
15 SOI’s reference to Ohio in this report, without specific reference to Cincinnati, does not  
16 make a substantial showing of falsity, given that the affiant also relied on other  
17 information provided by the DEA in Oakland, including investigation into defendant’s  
18 travel patterns and financial activity. On this record, defendant fails to show that the  
19 affiant falsely stated that the DEA provided information to TFO Baker or that the  
20 statement was intentionally false or made with reckless disregard for the truth.

21 **c. Defendant’s Probation-Related Travel**

22 Lastly, defendant challenges the affiant’s statement that he learned of defendant’s  
23 court date on December 3, 2014, through defendant’s probation officer, and knew of  
24 defendant’s probation status and the legitimate purpose of his visits to Cincinnati, but  
25 used defendant’s travel pattern to seek a GPS tracking warrant. As discussed above  
26 with respect to the Captiva warrant affidavit, the Equinox affidavit acknowledged that  
27 defendant was on Hamilton County probation and did not hide or omit the fact that he  
28 was on probation or that he went to the county court building. The Equinox affidavit



1 further verified that defendant met with his probation officer on October 22, 2014, after  
2 confirming with defendant's probation officer.

3 **d. Totality of Circumstances**

4 Under the totality of the circumstances, the Equinox affidavit supports a fair  
5 probability that defendant was involved in illegal distribution of controlled substances and  
6 that evidence of the criminal activity would be found by monitoring defendant's rental car,  
7 based primarily on the background facts asserted in the Captiva affidavit: defendant's  
8 criminal history, including 4 prior drug offenses and current probationary status for a 2009  
9 drug trafficking conviction; defendant's travel pattern of short trips to Cincinnati about 2 or  
10 3 times per month; defendant's practice of using wire transfers and money orders in Ohio  
11 to move money back to the Bay Area; the affiant's 15 years' law enforcement experience  
12 and familiarity with drug trafficking, and his opinion that defendant's financial patterns  
13 were indicative of evading detection by law enforcement and money laundering.

14 The Equinox affidavit was also supported by additional facts obtained from  
15 surveillance from his earlier trip to Cincinnati when his Captiva rental car was tracked:  
16 after defendant met with his probation officer on October 22, 2014, he met with three men  
17 who have local drug histories, two of whom were known to be large-scale narcotics  
18 dealers. Although the affiant did not provide specific criminal histories for those three  
19 associates, it was reasonable for the issuing judge to rely on the affiant's familiarity with  
20 their criminal histories, given that the affiant was a local law enforcement officer. The  
21 DEA also had recently provided information that defendant was sending cocaine and  
22 heroin to Cincinnati and traveling there to collect proceeds from the drug sales,  
23 supporting probable cause to issue a GPS tracker warrant.

24 The motion to suppress evidence seized pursuant to the Equinox warrant, and  
25 request for *Franks* hearing, are DENIED.

26 **D. UPS Package Warrant**

27 Defendant contends that law enforcement lacked reasonable suspicion to detain  
28 the UPS package, addressed to LeShawn Lawson, The Speed Repairs, [ ] Hayward, CA

94544, to conduct a dog sniff, and that the search warrant authorizing the search of the UPS package lacked sufficient probable cause. Doc. no. 41. Defendant also requests an evidentiary hearing to test Officer Robertson's deliberately false statements in the UPS affidavit. Defendant further argues that the evidence seized pursuant to the UPS warrant should be suppressed as the tainted fruit of the two earlier GPS tracking warrants (Captiva and Equinox), but as the court has found that those earlier warrants were supported by probable cause, it is not necessary to reach the issue of taint.

### 1. Reasonable Suspicion to Detain Parcel

Law enforcement authorities may detain a package to conduct an investigation "if they have a reasonable and articulable suspicion" that it contains contraband or evidence of illegal activity. *United States v. Hernandez*, 313 F.3d 1206, 1210 (9th Cir. 2002) (citation omitted). See *United States v. Hoang*, 486 F.3d 1156, 1162 (9th Cir. 2007) (Fourth Amendment rights were not implicated by a brief ten-minute detention of package in FedEx hold room without reasonable suspicion before random dog sniff because it did not interfere with FedEx's ability to deliver his package on time). To determine whether reasonable suspicion exists, reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *Id.* (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)).

The government does not dispute that reasonable suspicion was necessary to detain the parcel for examination by a trained canine, and does not contend that the detention of the package was so brief that it did not implicate Fourth Amendment interests, as in *Hoang*. Defendant contends that law enforcement lacked reasonable suspicion to detain the package from UPS because the package was detained solely on the basis of its mere association with defendant, without evidence of illegality. Mot. Suppress UPS Warrant (doc. no. 41) at 11.

As set forth by the government, the UPS parcel warrant affidavit includes detailed facts that establish reasonable suspicion to detain the package to conduct a dog sniff:

(i) Officer Robertson received information that defendant is a “large scale cocaine and heroin dealer [who] ships cocaine and heroin from Hayward, California to Cincinnati, Ohio using parcel services.” Although the affidavit did not set forth the source of this information within the four corners of the UPS warrant, Officer Robertson was an investigator with the Major Drug Offender Unit and the ongoing investigation by law enforcement supported reasonable suspicion to detain the package, particularly in light of the information from the DEA in Oakland that Officer Robertson articulated in the Equinox affidavit, including information that defendant was sending cocaine and heroin to Cincinnati and travelling to Cincinnati to collect proceeds from the drug sales.

(ii) on December 3, 2014, defendant was seen leaving a UPS store and FedEx store with packaging materials, driving to a residence and meeting with known local drug dealers, driving to a UPS store and shipping a large parcel. This activity, combined with the information from DEA discussed above, supports reasonable suspicion to detain the UPS package for further investigation.

## 2. Dog Sniff Supported Probable Cause

Defendant argues that the alert by a trained canine to the presence of a controlled substance does not support probable cause to issue a warrant because up to 96% of all U.S. currency is tainted with a controlled substance.<sup>1</sup> Mot. Suppress UPS Warrant (doc. no. 41) at 12-13. Defendant fails to articulate how the dog sniff was unreliable under the holding of *Florida v. Harris*, 133 S. Ct. 1050 (2013), which is controlling on whether a trained drug detection canine can provide probable cause for a search.

In *Harris*, the court noted that the well-established “totality of the circumstances” standard for probable cause applied to drug detection canines, and rejected a strict evidentiary checklist developed by the Florida Supreme Court. “The question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog’s alert,

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<sup>1</sup> In making this argument, defendant fails to consider that the dog alert would suggest the presence of drugs, not cash, and that it was unexpected to discover that someone would ship over \$300,000 cash in a UPS package.

1 viewed through the lens of common sense, would make a reasonably prudent person  
2 think that a search would reveal contraband or evidence of a crime.” *Harris*, 133 S. Ct. at  
3 1058. The Court held that “evidence of a dog’s satisfactory performance in a certification  
4 or training program can itself provide sufficient reason to trust his alert,” and that a court  
5 can presume (subject to any conflicting evidence offered) that the dog’s alert provides  
6 probable cause to search “[i]f a bona fide organization has certified a dog after testing his  
7 reliability in a controlled setting,” or, “even in the absence of formal certification, if the dog  
8 has recently and successfully completed a training program that evaluated his proficiency  
9 in locating drugs.” *Harris*, 133 S. Ct. at 1057.

10 The government notes that the UPS affidavit provides background information on  
11 Bronco, the trained canine that alerted defendant’s UPS package, to establish his  
12 reliability: Bronco’s handler, Officer Bonner, is certified through the State of Ohio as a  
13 canine handler, and Bronco is trained and certified through the State of Ohio.  
14 Additionally, Bronco has alerted to the odor of drugs at other locations which have been  
15 proven to be true and correct on numerous occasions in the past. UPS Affidavit (doc. no.  
16 52) at LAWSON-0278. Defendant does not dispute the accuracy of Bronco’s credentials,  
17 and does not show that a probable cause hearing to challenge the evidence of Bronco’s  
18 reliability is warranted.

19 Bronco’s alert to the UPS package, in light of the other reliable evidence of  
20 defendant’s drug trafficking activities presented in the UPS affidavit, established a fair  
21 probability that evidence of criminal activity would be found in the UPS package  
22 addressed to defendant at a business address in Hayward. Looking at the statements in  
23 the UPS affidavit, the specific observations of defendant shipping a large parcel at the  
24 UPS store after meeting with local cocaine and heroin distributors are reasonably  
25 trustworthy facts. Under the totality of the circumstances, including observations of  
26 defendant by law enforcement and the positive alert by a trained canine, the affidavit  
27 demonstrated probable cause to search the UPS package.  
28

**3. Request for *Franks* Hearing**

Defendant contends that the UPS affidavit contains misstatements asserting that defendant was a drug dealer without supporting evidence and omissions about the nature of his visits to Cincinnati as required for his court probation. Mot. Suppress UPS Warrant (doc. no. 41) at 16-17. The court determines that a *Franks* hearing is not warranted because defendant has not made a preliminary showing that any statement was false or that the misstatement was material. Although the UPS affidavit lacks the detailed information supporting Officer Robertson's statement that defendant was a drug dealer who shipped cocaine and heroin to Cincinnati, the information provided by DEA to Cincinnati police is set forth in more detail in Robertson's Equinox affidavit. In light of the record, defendant fails to make a preliminary showing of falsity or reckless disregard for the truth. Furthermore, the fact that defendant had a court appearance scheduled on December 3, 2014, was not material to the showing of probable cause based on observations of defendant's actions outside the courthouse, including making trips to UPS and FedEx stores, meeting with individuals known to local law enforcement as drug dealers, and then shipping a large parcel from a UPS store which triggered an alert by a trained drug detection canine.

The motion to suppress evidence seized pursuant to the UPS warrant, and request for an evidentiary hearing pursuant to *Franks* to challenge the veracity of statements in the UPS affidavit, are therefore DENIED.

**E. Bentley Warrant**

Defendant contends that the Bentley warrant lacked probable cause because the affidavit was premised on uncorroborated information from an unnamed, unreliable source, and on conclusory statements that defendant was engaged in criminal activity based on observations of defendant conducting apparently lawful activities. Mot. Suppress Bentley Warrant (doc. no. 42).

Defendant also challenges the Bentley warrant on the ground that the prior warrants permitting GPS tracking of the Captiva and Equinox and search of the UPS

1 parcel were illegal and tainted all the evidence subsequently seized as fruits of the  
2 poisonous tree. *Id.* at 23-25. This challenge to the Bentley warrant is rendered moot by  
3 the court's finding that those earlier warrants were supported by probable cause.

#### 4 **1. Reliability of Confidential Source**

5 Defendant contends that the confidential informant's tip is not sufficiently reliable  
6 to support probable cause to issue the Bentley warrant. To determine whether  
7 information provided by informants establishes probable cause, the issuing magistrate  
8 looks to the "totality of the circumstances." *United States v. Angulo-Lopez*, 791 F.2d  
9 1394, 1396 (9th Cir. 1986) (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Evidence  
10 bearing on the veracity of the informant and his basis of knowledge is considered  
11 together with other relevant evidence in making the probable cause determination based  
12 on the totality of the circumstances. *Angulo-Lopez*, 791 F.2d at 1396. Defendant  
13 challenges the informant's reliability because the affiant discloses that the CS receives  
14 monetary compensation and that the CS has a prior conviction for making/passing a  
15 fictitious check, rendering him a fraud and unreliable. Sealed Winston Affidavit ¶ 16 n.2.

16 Defendant cites *United States v. Rowland*, 464 F.3d 899 (9th Cir. 2006), where the  
17 court identified several factors to be considered in determining the reliability of an  
18 informant's tip.

19 First, a known informant's tip is thought to be more reliable  
20 than an anonymous informant's tip. See *Florida v. J.L.*, 529  
21 U.S. 266, 271 (2000); *Adams v. Williams*, 407 U.S. 143, 146–  
22 47 (1972). That is because an anonymous informant typically  
23 cannot be questioned about the basis for knowing the  
24 information or motive for providing the tip, nor can the  
25 anonymous informant be held accountable for providing false  
26 information in violation of the law. See *J.L.*, 529 U.S. at 271;  
27 *Adams*, 407 U.S. at 146–47. Second, an informant with a  
28 proven track record of reliability is considered more reliable  
than an unproven informant. See *Adams*, 407 U.S. at 146–  
47. Third, the informant's tip is considered more reliable if the  
informant reveals the basis of knowledge of the tip—how the  
informant came to know the information. See *Spinelli v.*  
*United States*, 393 U.S. 410, 416 (1969), *abrogated on other*  
*grounds by Gates*, 462 U.S. at 238. Finally, a tip that provides  
detailed predictive information about future events that is  
corroborated by police observation may be considered  
reliable, even if the tip comes from an anonymous source.



See [*Alabama v. White*, 496 U.S. 325, 329–30 (1990)]; *Gates*, 462 U.S. at 243–45; *Draper v. United States*, 358 U.S. 307, 313 (1959). Predictive information that reveals a detailed knowledge of an individual’s intimate affairs is more reliable than predictive information that could be observed by the general public, see *White*, 496 U.S. at 332, *J.L.*, 529 U.S. at 272, and such self-verifying detail is considerably more valuable if it relates to suspicious activities than if it relates to innocent activities, see *Gates*, 462 U.S. at 245 n. 13.

*Rowland*, 464 F.3d at 907-08.

Here, the informant made himself known to the DEA agents, who met with the informant personally on December 9, 2014. Consolidated Opp. (doc. no. 52) at 4 n.2. The government represents that a copy of the DEA report detailing this meeting with the CS was produced to the defense. Further, the CS revealed the basis of knowledge of the tip and provided detailed statements made to the CS by defendant on November 30, 2014: (1) defendant was going to L.A. to pick up cocaine; (2) the cocaine supplier was a Crip; (3) defendant would ship the bricks to Ohio on December 1; (4) the shipment of cocaine would arrive in Ohio on December 2; (5) defendant was due to appear in court in Ohio on December 3; and (6) defendant drives the Bentley to L.A. to pick up cocaine. Sealed Winston Affidavit ¶¶ 16-17. Defendant now disputes that he ever told anyone that he went to L.A. to pick up bricks to send to Ohio or that he was affiliated with the Crips, doc. no. 60 ¶¶ 20-21, but cites no authority requiring law enforcement to verify with corroborating evidence that a suspect under investigation made statements to a confidential informant for the purpose of establishing probable cause. Rather, “[w]hen a search warrant is based solely on an informant’s tip, the proper analysis is whether probable cause exists from the totality of the circumstances to determine a sufficient level of reliability and basis of knowledge for the tip. *United States v. Bishop*, 264 F.3d 919, 924 (9th Cir. 2001) (citing *Gates*, 462 U.S. at 238).

Although defendant also argues that the information provided by the CS was uncorroborated, the information about defendant’s plans to travel to Ohio on December 3 for a court date in Ohio on December 3 was independently verified by law enforcement in Cincinnati. Cincinnati Police Officer Robertson verified with defendant’s probation officer



that defendant had a probation visit that day, after the visit concluded. See *Equinox Affidavit* (doc. no. 52, Ex. D). See *Angulo-Lopez*, 791 F.2d at 1397 (“A citizen informant’s veracity may be established by the absence of an apparent motive to falsify and independent police corroboration of the details provided by the informant.”) (citations omitted). Defendant points out that law enforcement did not corroborate that defendant ever shipped drugs anywhere at any time, much less on the date that the CS indicated. However, defendant cites no authority requiring law enforcement to corroborate all details, though corroboration of the information is relevant in weighing the CS’s reliability.

Defendant also points out that the agents obtained information about defendant’s December 3 travel plans from the CS after the fact, since the CS was not interviewed until December 9. Thus, defendant argues that the CS did not provide predictive information at all, and that the Bentley affidavit mischaracterizes the CS as a reliable source. However, the affidavit indicates that the CS met defendant on November 30, and the information from the CS about defendant’s travel plans to Cincinnati was consistent with Cincinnati law enforcement’s investigation. Further, the Bentley affidavit was dated December 29, 2014, after defendant traveled to Cincinnati, and did not suggest that “these events have yet to unfold,” as defendant argues. Reply to Consolidated Opp. (doc. no. 56) at 6.

Although defendant argues that the CS’s background shows that he/she had a motive and tendency to lie, the detailed basis of knowledge weighs in favor of reliability under the *Rowland* factors, and outweighs the CS’s criminal history and motivation for providing information to the DEA, which was disclosed to Magistrate Judge Zimmerman in the Bentley affidavit. Sealed Winston Affidavit ¶ 16 n.2.

## 2. Observations by Law Enforcement

Defendant also challenges the mischaracterization of defendant’s lawful activities, observed by DEA agents and Cincinnati police officers, as indicative of criminal activity. Defendant points out that travelling to Cincinnati for court-required visits, renting a car, going to shipping stores, visiting friends, and shipping a large parcel are innocuous

1 activities on their face. He contends that the inference of criminality is based only on the  
2 officers' conclusory statements which were offered in the probable cause affidavits.  
3 Although each of these activities standing alone would not give rise to believe that there  
4 was a fair probability of criminal activity, taken together, they gave rise to probable cause.  
5 As discussed above, the earlier observations in Ohio by law enforcement were detailed in  
6 the Bentley affidavit: on December 3, 2014, defendant was seen leaving a UPS store and  
7 a FedEx store with packaging materials, then drove to a residence where law  
8 enforcement recognized several individuals from current investigations involving high-  
9 level cocaine traffickers. Sealed Winston Affidavit ¶¶ 19-20. Defendant was seen  
10 loading a large parcel into the trunk of his rental car and taking it to a UPS store, then  
11 leaving with papers in his hand. The parcel was identified positive for narcotics by a K-9  
12 and searched pursuant to a warrant, leading to discovery of \$337,040.

13 Defendant reasserts his challenges to the dog alert, and contends that even if  
14 there was probable cause to believe that the money seized from the UPS package was  
15 involved in illegal activity, there is no nexus between the UPS parcel and the Bentley.  
16 Mot. Suppress Bentley Warrant (doc. no. 42) at 21. Although no drugs were found at that  
17 point, the amount of cash found in a parcel that the canine alerted positive for drugs,  
18 when considered in light of all the evidence, supported a fair probability that defendant  
19 was involved in drug trafficking activity. Based on the totality of the circumstances, the  
20 DEA agent concluded that "the \$337,040 seized from the parcel were proceeds from the  
21 illegal sale of narcotics." Sealed Winston Affidavit ¶ 22.

22 The government also relies on the evidence that defendant purchased a Bentley  
23 for \$72,075 in cash even though he was not legitimately employed. This unexplained  
24 wealth supports a reasonable inference that the significant amount of cash was gained  
25 through drug trafficking. Consolidated Opp. (doc. no 52) at 5. See *United States v.*  
26 *Miguel*, 952 F.2d 285, 289 (9th Cir. 1991) ("We have held that evidence of sudden or  
27 unexplained wealth is admissible in drug conspiracy trials if it creates a reasonable  
28 inference that the unexplained wealth came from the drug conspiracy.") (citing *United*

1 *States v. Patterson*, 819 F.2d 1495, 1501 (9th Cir. 1987) (“Evidence of unexplained  
2 wealth is relevant in a narcotics conspiracy case if it creates a reasonable inference that  
3 the unexplained wealth came from the narcotics conspiracy.”)). Based on defendant’s  
4 statements to the CS that he drives the Bentley to L.A. to pick up cocaine and other  
5 evidence of drug trafficking presented in the affidavit, the affidavit presented a fair  
6 probability that monitoring the Bentley would likely provide evidence of defendant’s drug  
7 trafficking activity by providing information about his movement after he obtains large  
8 quantities of cocaine.

### 9 **3. Good Faith Reliance**

10 The government argues that even if the Bentley warrant was defective, the officers  
11 relied on the magistrate judge’s probable cause determination in good faith and the  
12 exclusionary rule would not serve a deterrent purpose under *United States v. Leon*, 468  
13 U.S. 897, 922 (1984). The court need not reach the good faith exception, having  
14 determined that the Bentley affidavit supported probable cause to issue the warrant  
15 authorizing the GPS tracking device.

### 16 **4. Request for *Franks* Hearing**

17 Defendant contends that the Bentley affidavit contains the following misstatements  
18 and omissions and seeks an evidentiary hearing under *Franks*. Mot. Suppress Bentley  
19 Warrant (doc. no. 42) at 21-22.

20 (a) ¶ 16: That defendant told the CS that his supplier of cocaine is a  
21 member of the “Crips” in Los Angeles, California.

22 Defendant contends that he never made this statement, and states that he has never  
23 been affiliated with the Crips. Lawson Decl. (doc. no. 60) ¶ 21. Defendant also argues  
24 generally that two DEA reports citing an unnamed source contain information that  
25 materially differs from the information in the Bentley affidavit, particularly the statement  
26 identifying his source of cocaine in L.A. as a member of the Crips and the specific  
27 statements about shipping bricks to Ohio on a particular date. Doc. no. 42 at 5-6.  
28

1 The government points out that defendant's statements to the CS were  
2 memorialized in a DEA report detailing the meeting between the CS and law enforcement  
3 on December 9, 2014. To the extent that defendant argues that the CS information in the  
4 affidavit differed from the content of DEA reports, the government refers to the December  
5 9, 2014 report detailing the interview with the CS. Defendant does not rebut the  
6 government's reference to the report produced in discovery.

7 (b) ¶ 16: That defendant told the CS that he would ship the "bricks" out  
8 on Monday (December 1, 2014) to Ohio and that the load of cocaine would  
9 arrive in Ohio on Tuesday (December 2, 2014).

10 Defendant disputes ever making this statement or ever shipping narcotics. Lawson Decl.  
11 (doc. no. 60) ¶ 20. Defendant also contends that discovery indicates that this information  
12 was not provided by the CS, but was only suspected by DEA agents in Cincinnati and  
13 was a purely fictional account made up by law enforcement. Defendant cites a DEA  
14 report by Agent Ashley (which was not submitted as an exhibit) noting "Based on prior  
15 surveillances conducted on LAWSON by DEA Cincinnati agents/officers, it was  
16 suspected that LAWSON had shipped kilogram quantities of cocaine to Ohio and would  
17 be facilitating drug transactions when he (LAWSON) arrived on December 3, 2014." Doc.  
18 no. 42 at 6-7. As noted above, defendant has not rebutted the government's discovery  
19 reference to a DEA report detailing its meeting with CS on December 9, 2014, that  
20 memorialized the in-person interview with the CS.

21 (c) ¶ 17 n.3: That defendant is not legitimately employed, yet purchased  
22 the Bentley for \$72,075 in cash.

23 Defendant contends that agents were aware that he worked as an iron worker in the Bay  
24 Area and as a club promoter for his business, Froggle, Inc. The government responds  
25 that while defendant has claimed that he worked as an iron worker and club promoter, he  
26 has not produced documentation to show these were real jobs and does not cite any  
27 discovery to show that agents were aware that he was legitimately employed. Defendant  
28

1 has offered no corroborating evidence to support his statement that he was gainfully  
2 employed at the time of his arrest as an entertainer and an ironworker.

3 (d) ¶ 18: that defendant's court appearance on December 3, 2014 in  
4 Hamilton County Court "was a result of LAWSON previously getting  
5 arrested at CGV for carrying \$29,147 in cash on his person."

6 Defendant points out that he was arrested at CGV airport on October 19, 2013 on a  
7 bench warrant for a 2009 conviction, and that no charges were filed as a result of the  
8 \$29,147 in cash that was seized. The government concedes that the affidavit  
9 erroneously attributed defendant's arrest at CGV to the cash seizure rather than the open  
10 bench warrant, but argues that this error was an inadvertent mistake, not reckless  
11 disregard for the truth. Viewed in the context of defendant's criminal history, where he  
12 was subject to a bench warrant on a 2009 drug trafficking conviction in Hamilton County,  
13 Ohio, and was subsequently sentenced after his 2013 arrest, this error in the Bentley  
14 affidavit does not appear to be intentionally false or made with reckless disregard to  
15 mislead the issuing magistrate judge, given that the affiant confirmed with Cincinnati  
16 police that defendant had a court appearance scheduled on December 3. *See United*  
17 *States v. Meling*, 47 F.3d 1546, 1554 (9th Cir. 1995) (FBI's failure to conduct more  
18 thorough background check on informant before filing wiretap application did not amount  
19 to reckless disregard of the truth) (citing *United States v. Miller*, 753 F.2d 1475, 1478 (9th  
20 Cir.1985) ("It might have been prudent for the federal agents to check on [an informant's]  
21 background and criminal record, but their failure to do so is not reckless disregard.")).

22 While the affiant concluded erroneously that defendant was arrested for  
23 possession of \$29,147 that was found on his person, this error was not material, given  
24 that the actual basis for the 2013 arrest, a bench warrant for drug trafficking, would have  
25 further supported the showing of probable cause in the Bentley affidavit. *See Meling*, 47  
26 F.3d at 1554 (to determine whether misstatements are material so as to warrant a *Franks*  
27 hearing, the court considers "whether the affidavits supporting the finding of probable  
28 cause, 'once corrected and supplemented, would provide a [reviewing judge] with a

1 substantial basis for concluding that probable cause existed.”) (quoting *Stanert*, 762 F.2d  
2 at 782).

3 Defendant also points out that the Bentley affidavit, ¶ 18, states that an officer  
4 maintained “mobile surveillance on LAWSON as he travelled toward downtown  
5 Cincinnati, Ohio” from the Budget rental car company, but fails to mention that local law  
6 enforcement obtained a GPS tracking warrant and installed a tracking device on  
7 defendant’s rental car while he was in court on December 3, 2014. Doc. no. 42 at 8-9.  
8 Defendant does not articulate how the fact that the police used a tracking device would  
9 be material to the probable cause finding, given that the Bentley affidavit gave specific  
10 details about what the Cincinnati police observed while defendant was under  
11 surveillance.

12 (e) ¶ 20: that when defendant was observed entering the residence at  
13 477 Canvas Back Circle in Cincinnati, “Agents recognized several  
14 individuals at the residence from current investigations involving high-level  
15 cocaine traffickers.”

16 Defendant contends that the only individual recognized by law enforcement was  
17 Jonathan Blair, and that the government had no evidence that he was involved in cocaine  
18 trafficking. The government responds that it produced a DEA surveillance report from  
19 December 3 stating that Jonathan Blair and Antonio Garnett were seen at 477 Canvas  
20 Back Circle during the time that defendant was at the residence. The Equinox warrant  
21 affidavit states that Blair and Garnett have local drug histories and are known to law  
22 enforcement as local drug distributors from prior investigations. As discussed earlier,  
23 defendant acknowledges that the government has not produced investigative reports  
24 related to Blair and Garnett because the investigations are ongoing. Mot. Suppress  
25 Equinox (doc. no. 40) at 7.

26 Even considering the factual assertions in defendant’s late-filed declaration, the  
27 court determines that defendant has not made a substantial preliminary showing of a  
28 false statement in the affidavit, either deliberately or recklessly made, or of the materiality

of a false statement to warrant a *Franks* hearing. *United States v. Dozier*, 844 F.2d 701, 705 (9th Cir. 1988) (citing *Franks*, 438 U.S. at 171–72). Accordingly, the motion to suppress evidence seized pursuant to the Bentley warrant and for a *Franks* hearing is DENIED.

### III. Motion for Revelation and Production of All Informants

Defendant moves for an order directing the government to disclose the identity of the confidential sources or informants that provided information to law enforcement in the investigation leading to the charges against him, to produce the informants for interview or testimony, and to reveal their locations. Doc. no. 45.

#### A. Legal Standard

##### 1. *Roviaro* Qualified Privilege

The government has a qualified privilege to withhold an informant's identity. See *Roviaro v. United States*, 353 U.S. 53, 59-61 (1957). There is no fixed rule as to disclosure of the identity of the informant; rather, the public's interest in the flow of information should be carefully balanced against the individual's right to prepare his defense. *Id.* at 62. To obtain disclosure of an informant, the defendant must show a need for the information. *United States v. Henderson*, 241 F.3d 638, 645 (9th Cir. 2001); see also *United States v. Spires*, 3 F.3d 1234, 1238 (9th Cir. 1993); *United States v. Sai Keung Wong*, 886 F.2d 252, 256 (9<sup>th</sup> Cir. 1989). Where the government opposes disclosure of the identity of an informer, this court must balance: "1) the extent to which disclosure would be relevant and helpful to the defendant's case, and 2) the government's interest in protecting the identity of the informant." *Spires*, 3 F.3d at 1238. "In doing so the court must consider 'the public interest in protecting the flow of information against the individual's right to prepare his defense.'" *Id.* (citing *Roviaro*, 353 U.S. at 62.).

In order to balance the interests of the individual and society, the court examines three factors to determine whether an informant's identity should be revealed: (1) the degree of the informant's involvement in the criminal activity; (2) the relationship between



the defendant's asserted defense and the likely testimony of the informant; and (3) the government's interest in nondisclosure. *United States v. Gonzalo Beltran*, 915 F.2d 487, 488-89 (9th Cir. 1990) (per curiam). Courts generally require "disclosure where the informant was a participant in, or a witness to the crime charged." 3 Wharton's Criminal Evidence § 11:60 (15<sup>th</sup> ed. 2001). Conversely, they "generally do not require disclosure where the informant merely introduced the police officers to the defendant, supplied information to law enforcement officers, played some other peripheral role in the crime, or where the prosecution did not rely on the informant or on information supplied by him in showing the defendants' guilt." *Id.*

To help in its determination regarding "whether *in fact* any of the informants would be helpful to the defendant, and to aid in its application of the *Roviaro* balancing test," *United States v. Amador-Galvan*, 9 F.3d 1414, 1417 (9<sup>th</sup> Cir. 1993), the trial court should hold an *in camera* hearing when the defendant is able to make a "minimal threshold showing that disclosure would be relevant and material to at least one defense." See *Henderson*, 241 F.3d at 645 (citations omitted). Therefore, a determination regarding disclosure is generally a two-step process. First, the defendant must demonstrate the "minimal threshold showing" required for an *in camera* hearing. Second, with the assistance of the *in camera* hearing, the court then makes a determination regarding whether disclosure is appropriate under the standards set forth in *Roviaro*.

## 2. ***Brady* Obligations**

Under *Brady v. Maryland*, 373 U.S. 83 (1963), the government is required to disclose information that is favorable to the defendant and material to guilt or punishment. *Id.* at 87. The obligation covers not only exculpatory evidence but also information that could be used to impeach government witnesses. *Giglio v. U.S.*, 405 U.S. 150, 154 (1972). "Evidence impeaching the testimony of a government witness falls within the *Brady* rule when the reliability of the witness may be determinative of a criminal defendant's guilt or innocence." *Singh v. Prunty*, 142 F.3d 1157, 1161 (9<sup>th</sup> Cir. 1998) (citations omitted).

**B. Discussion****1. Defendant's Need for Identity of Informants to Challenge Probable Cause**

Defendant contends that he is entitled to investigate the veracity and potential exculpatory testimony of the following unnamed individuals who provided information because their disclosure is essential to challenging probable cause underlying the various warrants issued in the course of the investigation.

(a) The Oakland CI who provided information that defendant was engaged in shipping narcotics through the mail, shipping money via wire and mail, and obtaining narcotics from the Crips street gang. This individual gave information in exchange for substantial favors, monetary payment, consideration and leniency, and the information was used by law enforcement in support of several warrants issued in this case: (a) that defendant shipped narcotics to Ohio; (b) that defendant would go to L.A. to obtain drugs; (c) that defendant would drive these drugs back from L.A. to the Bay Area before shipping them to Ohio. See Sealed Winston Affidavit.

(b) The informant(s) at the Cincinnati airport who tracked defendant's travel patterns. The government represents that one source of information ("SOI-1") provided information to law enforcement about defendant's flight information and another, SOI-2, provided information about defendant's rental car usage. Doc. no. 50 at 4.

(c) The source of information in Ohio ("SOI-3") who contacted Task Force Officer Baker and confirmed that Antonio Garnett, who was seen with defendant in Cincinnati, currently is a large scale cocaine and heroin distributor in the greater Cincinnati area. See Equinox Warrant Affidavit (Consolidated Opp., Ex. D (doc. no. 52)).

Defendant argues that the *Roviaro* balancing test applies to requests for the identity of, and information supplied by, an informant for the purpose of challenging a search warrant affidavit, and that disclosure of the informants here is necessary to meaningfully challenge probable cause. Mot. Disclose Informants (doc. no. 45) at 9. At a minimum, defendant asks that the court conduct an in camera hearing to determine the reliability of the informants, and to allow defense counsel to question the informants, citing *United States v. Anderson*, 509 F.2d 724 (9th Cir. 1974), which held as follows:

[R]ather than establishing a fixed rule that either requires or precludes disclosure of the informant's identity when probable cause is in issue, we hold that the responsibility for striking the proper balance in each case rests with the trial judge. In striking that balance the trial judge, in the exercise of his discretion, can conduct an in camera hearing to which the defense counsel, but not the defendant, is admitted. The defense counsel could then be permitted to participate in the in camera proceedings and to cross-examine the in camera witness or witnesses.

*Id.* at 729. See also *United States v. Ordonez*, 737 F.2d 793, 809 (9th Cir. 1983) ("the conducting of in camera proceedings, where disclosure is requested, is left to the discretion of the trial court").

## 2. Public Interest Against Disclosure

The government cites Ninth Circuit authority recognizing that the limited privilege to withhold informants' identities "serves several important law enforcement objectives, including encouraging citizens to supply the government with information concerning crimes." *United States v. Henderson*, 241 F.3d 638, 645 (9th Cir. 2000). The Ninth Circuit recognizes that the process due at a suppression hearing may be less elaborate than the protections due the defendant at the trial itself and that disclosure of an informant's identity is not always required where the sole ground for disclosure is to challenge probable cause. *United States v. Buffington*, 815 F.2d 1292, 1298-99 (9th Cir. 1987) (citing *United States v. Raddatz*, 447 U.S. 667, 679 (1980)).

In *McCray v. Illinois*, 386 U.S. 300, 313-14 (1967), the Supreme Court recognized that the informant's privilege, in the context of suppression hearings, may preclude the

defendant from cross-examining the informant and, for that matter, from cross-examining officers regarding the informant's identity. Under Ninth Circuit authority, it is well-settled "that 'a trial court need not require federal agents to disclose the identity of a reliable informant where the sole ground for seeking that information is to establish the existence of probable cause for arrest.'" *United States v. Fixen*, 780 F.2d 1434, 1439 (9th Cir. 1986) (quoting *United States v. Mehciz*, 437 F.2d 145, 149 (9th Cir. 1971). See also *McCray*, 386 U.S. at 311 ("Much less has the Court ever approached the formulation of a federal evidentiary rule of compulsory disclosure where the issue is the preliminary one of probable cause, and guilt or innocence is not at stake"); *United States v. Marshall*, 526 F.2d 1349, 1359 (9th Cir. 1975) (no right to disclosure of informant "who provided only information which, combined with other facts, gave the officers probable cause to arrest").

### 3. Balancing Interests Under *Roviaro*

Here, the government has provided defense counsel with the substance of the informants' communications with law enforcement, minimizing defendant's need to obtain their identity to challenge probable cause. Under the *Beltran* factors for weighing the competing interests under *Roviaro* as to each of the confidential sources, the court finds that the public interest against disclosure outweighs defendant's need to obtain each informant's identity.

#### a. Oakland CI

The Oakland CI played no role in the offense with which defendant is charged, is not a percipient witness, and will not be called to testify. The government is not aware of any information that the Oakland CI possesses that would be relevant and helpful to the defense. The government asserts a strong interest in nondisclosure: to keep the Oakland CI safe, to maintain the government's credibility with cooperating informants, and to preserve other investigations. See *United States v. Napier*, 436 F.3d 1133, 1136 (9th Cir. 2006) (recognizing the government's interest in maintaining integrity of ongoing criminal investigations and ensuring the safety of the informant).

1           The government suggests that the risk to the Oakland CI is greater here based on  
2 defendant's association with a member of the Crips. Defendant challenges this  
3 contention, given that the only indication that defendant is associated with the Crips is  
4 based on the CI's own uncorroborated allegation. Because the record does not support a  
5 strong inference that defendant has a gang affiliation, the risk of gang retaliation is not  
6 given much weight. However, the government represents that the Oakland CI is active in  
7 ongoing investigations, presenting a strong interest against disclosure to preserve  
8 ongoing and future investigations.

9           Furthermore, defendant's interest in disclosure is lessened here where defense  
10 counsel has been provided with the content of the Oakland CI's communications with law  
11 enforcement to challenge the sufficiency of the probable cause showing, unlike cases  
12 where the government sought to protect even the content of the communications  
13 because they tended to reveal the informant's identity. *See Napier*, 436 F.3d at 1136  
14 (recognizing that *Roviaro* protects more than just the name of the informant and extends  
15 to information that would tend to reveal the identity of the informant); *U.S. v. Ellis*, No. 13-  
16 CR-00818 PJH, 2015 WL 6551628, at \*6 (N.D. Cal. Oct. 29, 2015) (determining that the  
17 contents of the informant's communications with law enforcement may be withheld from  
18 disclosure where the defendants' interest in challenging probable cause was outweighed  
19 by the government's interest in nondisclosure of the informant's identity and information  
20 that would tend to reveal the informant's identity). Because the content of the  
21 communications has been disclosed to defense counsel, defendant's ability to challenge  
22 probable cause here has not been significantly compromised by nondisclosure of the  
23 informant's identity. *See Fixen*, 780 F.2d 1434 (affirming the probable cause  
24 determination supporting the warrantless arrest, where the government disclosed the  
25 information provided by the tipster that the police relied upon, without disclosing the  
26 informant's identity).

**b. Airport Sources**

With respect to the Cincinnati airport sources who tipped off law enforcement about defendant's flight information, SOI-1, and his rental car usage, SOI-2, neither informant was involved in the criminal activity, it seems apparent that they will not be called to testify, and the government is not aware that the SOI's provided any incriminating information about defendant. Defendant questions the motivation of the Ohio SOIs to provide information to the government, such as monetary compensation or lenient treatment, but beyond the probable cause challenge, defendant has not shown how these Ohio SOIs possess information that would be relevant and helpful to the defense, or critical to a fair trial. If the government learns of any exculpatory evidence, it would be bound by its *Brady* obligations to disclose such information.

**c. Ohio Source**

With respect to SOI-3, who confirmed to TFO Baker that Garnett was involved in drug trafficking, the government does not directly address the *Beltran* factors as to whether SOI-3 was involved in the drug trafficking activity, or whether SOI-3 may have been a percipient witness and would be called to testify. From the face of the Equinox affidavit, however, there is no indication that SOI-3 provided incriminating information about defendant, and defendant does not show that he/she possessed information that would be relevant and helpful to the defense or critical to a fair trial. If the government learns of any exculpatory evidence, it would be bound by its *Brady* obligations to disclose such information. If the government determines that SOI-3 will be called to testify, then defendant may reopen the motion to disclose the identity of SOI-3 after first meeting and conferring with the government.

The government represents that all three Ohio SOIs remain active in current investigations, and that current and future investigations would be compromised if their identities were disclosed. At this juncture, the public interest in nondisclosure outweighs defendant's interest in obtaining the Ohio SOIs' identities for challenging probable cause,

1 particularly where the content of their communications with law enforcement has already  
2 been disclosed.

3 Having weighed defendant's interest in challenging probable cause, where none of  
4 the informants will be called to testify at trial and the government has disclosed the  
5 content of their communications with law enforcement, against the strong public interest  
6 against disclosure, the court DENIES the motion for an order directing the government to  
7 disclose the identity of the informants, to produce them for interviews, and to reveal their  
8 locations. Doc. no. 45.

#### 9 **IV. Motion to Suppress Evidence From Unlawful Stop and Prolonged Detention**

10 Defendant seeks an order suppressing all evidence obtained as a result of an  
11 unlawful traffic stop, prolonged detention, de facto arrest, and warrantless search and  
12 seizure of his person and vehicle on February 6, 2015. Doc. no. 43.

##### 13 **A. Legal Standard**

14 The Fourth Amendment guarantees "[t]he right of the people to be secure in their  
15 persons, houses, papers, and effects, against unreasonable searches and seizures."  
16 U.S. Const. amend. IV. Because stopping an automobile and detaining its occupants,  
17 "even if only for a brief period and for a limited purpose," constitutes a "seizure" under the  
18 Fourth Amendment, an official must have individualized "reasonable suspicion" of  
19 unlawful conduct to carry out such a stop. *Tarabochia v. Adkins*, 766 F.3d 1115, 1121  
20 (9th Cir. 2014) (citing *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *Delaware v.*  
21 *Prouse*, 440 U.S. 648, 663 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-  
22 86 (1975)).

23 "Reasonable suspicion" means "a particularized and objective basis for suspecting  
24 the particular person stopped of criminal activity." *United States v. Twillett*, 222 F.3d  
25 1092, 1095 (9th Cir. 2000). It is defined as a suspicion based on "specific and articulable  
26 facts which, taken together with rational inferences from those facts," justify a police  
27 intrusion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). "The reasonable suspicion standard is  
28 not a particularly high threshold to reach. 'Although . . . a mere hunch is insufficient to



1 justify a stop, the likelihood of criminal activity need not rise to the level required for  
 2 probable cause, and it falls considerably short of satisfying a preponderance of the  
 3 evidence standard.” *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013)  
 4 (en banc) (quoting *Arvizu*, 534 U.S. at 274).

5 In addition, when reviewing the record for the existence of reasonable suspicion,  
 6 “we ‘must look at the totality of the circumstances.’” *Valdes-Vega*, 738 F.3d at 1078  
 7 (quoting *Arvizu*, 534 U.S. at 274). “This process allows officers to draw on their own  
 8 experience and specialized training to make inferences from and deductions about the  
 9 cumulative information available to them that might well elude an untrained person.”  
 10 *Arvizu*, 534 U.S. at 273 (citations and internal quotation marks omitted).

#### 11 **B. Traffic Stop**

12 Defendant moves to suppress all evidence obtained directly or indirectly as the  
 13 result of the unlawful traffic stop on February 6, 2015, for lack of reasonable suspicion.  
 14 Officer Williams articulated two bases for conducting the stop of the Bentley: (1) that  
 15 there was “no plate” affixed to the rear of the vehicle, in violation of California Vehicle  
 16 Code § 5200; and (2) that he paced the Bentley traveling at approximately 75 mph in a  
 17 55 mph zone, a violation of California Vehicle Code § 22349(a). Doc. no. 43.

##### 18 **1. Missing License Plates**

19 Officer Williams reported that the Bentley did not have a license plate affixed to the  
 20 front or back of the vehicle in violation of Vehicle Code § 5200. Section 5200 provides as  
 21 follows:

22 (a) When two license plates are issued by the department for  
 23 use upon a vehicle, they shall be attached to the vehicle for  
 24 which they were issued, one in the front and the other in the  
 rear.

25 (b) When only one license plate is issued for use upon a  
 vehicle, it shall be attached to the rear thereof . . . .

26 Defendant contests this assertion, referring to photos taken during the search to  
 27 demonstrate that the Bentley displayed a dealer plate reading “California Wheels San  
 28 Jose” at the time of the stop, and had report-of-sale paperwork affixed to the lower-right

corner of the front windscreen, permitting the lawful operation of the vehicle without license plates or registration pursuant to California Vehicle Code § 4456(c). Mot. Traffic Stop (doc. no. 43), Ex. A. Section 4456(c) provides that a vehicle displaying a copy of the report of sale may be operated without license plates or registration card until either (1) the license plates and registration card are received by the purchaser, or (2) a 90-day period, commencing with the date of sale of the vehicle, has expired, whichever occurs first.

The government responds that although defendant attempts to characterize the “California Wheels San Jose” placard as a “dealer plate,” Mot. Traffic Stop (doc. no. 43) at 8, the picture of the placard distinctly shows that it was not an authorized dealer license plate allowing a motor vehicle to operate on the roadway. *Id.*, Ex. A. Defendant contends, however, that his vehicle displayed the “plates” of an automobile dealer no different than those displayed on thousands of cars in California when freshly purchased at any given time. Reply (doc. no. 58) at 3:16-18. Defendant cites no authority to support his contention that the plate displayed on his car complied with the Vehicle Code.

Furthermore, the government contends that due to the heavily tinted windows, Officer Williams was unable to see if the Bentley had a temporary registration sticker or report of sale documentation attached to the front windshield and had reasonable suspicion to pull the Bentley over to investigate further. Defendant responds that because the photos taken of the Bentley in its resting position after the stop clearly demonstrate that the requisite report-of-sale paperwork was plainly visible, the extent that the “no plate” formed the basis of a reasonable suspicion to detain the vehicle and its occupants, that reasonable suspicion quickly dissipated. Reply (doc. no. 58) at 3. Under the reasonable suspicion standard, however, an officer is not required to negate every possible explanation of innocence before taking action. *See United States v. Tiong*, 224 F.3d 1136, 1140 (9th Cir. 2000) (“Despite a possible innocent explanation for every police observation, a stop may be founded on reasonable suspicion.”); *United States v. Tuyakbayev*, No. 15-CR-00086-MEJ, 2015 WL 4692847, at \*5 (N.D. Cal. Aug. 6, 2015).

Defendant asserts that the temporary registration for the Bentley was affixed to the windshield in the lower right corner, and that it was visible to Officer Williams. Lawson Decl. (doc. no. 60) ¶ 6. The government points out that the license plates for the Bentley had been issued and were found in the trunk of the car, so that the exception under 4456(c) permitting operation of the car with only report of sale paperwork would not have applied. Opp. (doc. no. 51) at 8. Even if the temporary registration papers were valid and displayed on the windshield, the absence of any license plates affixed to the Bentley justified an investigatory stop under the reasonable suspicion standard. *See United States v. Lopez*, No. C 08-00342 SI, 2008 WL 4820753, at \*2 (N.D. Cal. Nov. 3, 2008) (officer's observation that defendant's car did not have a front license plate supported reasonable suspicion to justify the traffic stop), *aff'd*, 397 Fed. Appx. 338 (9th Cir. 2010).

## 2. Exceeding the Speed Limit

Officer Williams paced the Bentley for approximately 200 yards and concluded that defendant was traveling at a speed of approximately 75 mph in a 55 mph construction zone, in violation of California Vehicle Code § 22349(a). Arrest Report (doc. no. 51), Exhibit A-1 at 2. Defendant notes that Officer Williams does not have any radar evidence of his actual speed, relying instead only upon his visual estimate. Mot. Traffic Stop (doc. no. 43) at 9. Furthermore, even though Officer Williams noted in his police report that he paced defendant as exceeding the speed limit, when he radioed in the stop to dispatch, he described it as a "no plate," and not speeding. *Id.* Defendant asserts that it would have been impossible for Officer Williams to "pace" him at approximately 75 mph given the traffic conditions because Officer Lawson would not have been able to accelerate to a speed of 75 mph given the traffic conditions in the span of two exits. *Id.* Defendant admits he has no affirmative evidence of how fast he was going, but states that he was merely traveling with the flow of traffic, which was traveling bumper to bumper at the speed limit, and he argues that traffic was too thick on westbound I-580 at 9:30 a.m. on a Friday morning to exceed 55 mph. *Id.*; Lawson Decl. (doc. no. 60) ¶ 4.

The record reflects that Officer Williams' suspicion that defendant was speeding was not premised on a mere hunch, but rather, Officer Williams supported his visual estimate by pacing the vehicle, which indicated that defendant was traveling in excess of 75 MPH in a 55 MPH construction zone. Further, he found the difference between the estimated speed and the legal speed limit to be an estimated 20 MPH. These observations support the reasonableness of Officer Williams' belief that defendant was speeding. See *Tuyakbayev*, 2015 WL 4692847, at \*5 (officer's visual estimate that the defendant was driving at 20 mph above the speed limit, combined with hearing a loud engine accelerating toward him, supported reasonable suspicion to conduct an investigatory stop).

### 3. Pretextual Stop

Defendant further challenges the traffic stop for Vehicle Code violations as pretextual, informed and assisted by DEA agents monitoring defendant's movements. He argues that Officer Williams was called upon by the DEA to improperly stop a vehicle which they were currently tracking and maintaining "mobile surveillance" of, in a fishing expedition for evidence of narcotics trafficking that their multi-year and multi-agency investigation had failed to provide. Mot. Traffic Stop (doc. no. 43) at 9. The government does not dispute that Officer Williams was asked to perform a traffic stop on the Bentley. Williams Decl. (doc. no. 51) ¶ 2. Even if the traffic stop served "some other purpose," reasonable suspicion to believe that a traffic violation occurred is sufficient to justify an investigatory stop. *United States v. Willis*, 431 F.3d 709, 715 (9th Cir. 2005) (citing *Whren v. United States*, 517 U.S. 806, 810, 813 (1996)). See *United States v. Choudhry*, 461 F.3d 1097, 1101-02 (9th Cir. 2006). In *Whren v. United States*, the Supreme Court "specifically declined to hold that the Fourth Amendment test for traffic stops should be 'whether a police officer, acting reasonably, would have made the stop for the reason given.'" *Willis*, 431 F.3d at 715 (quoting *Whren v. United States*, 517 U.S. 806, 810, 813 (1996)).

Defendant also raises the possibility that this was a racially motivated stop of an African-American male driving an expensive car, Mot. Traffic Stop (doc. no. 43) at 10, but the record reflects that Officer Williams stopped defendant at the request of the DEA as part of an investigation, not due to racial animus. Because Officer Williams had reasonable suspicion to believe that defendant violated provisions of the Vehicle Code, the traffic stop was reasonable.

### C. Prolonged Detention

Defendant contends that even if the traffic stop was initially justified, Officer Williams's line of questioning unreasonably prolonged the stop and became an unreasonable seizure, citing *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).

Even a seizure that is lawful "can violate the Fourth Amendment if its manner of execution unreasonably infringes on interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). In *Rodriguez*, the Supreme Court held:

Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission" - to address the traffic violation that warranted the stop and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." Authority for the seizure thus ends when tasks tied to the traffic infraction are - or reasonably should have been - completed.

*Rodriguez*, 135 S. Ct. at 1614 (internal citations omitted). The Court in *Rodriguez* explained that "[t]he seizure remains lawful only 'so long as [unrelated] inquiries do not measurably extend the duration of the stop.'" *Id.* at 1615 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)). "An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop[, but] may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* at 1615. See also *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (holding that "mere police questioning does not constitute a seizure" unless it prolongs the detention of the individual; thus, no reasonable suspicion is required to justify questioning that does not prolong the stop).

**1. Traffic Stop Was Not Unreasonably Prolonged**

Defendant contends that Officer Williams unreasonably prolonged the traffic stop after pulling over defendant and articulating his stated reasons for doing so, by interrogating defendant inappropriately for an undue amount of time about his travels, his employment, and his vehicle. Mot. Traffic Stop (doc. no. 43) at 13. Defendant points out that Officer Williams did not even begin the process of writing a ticket for speeding or missing license plates.

Officer Williams states his belief that it took less than five minutes between the initiation of the traffic stop and obtaining defendant's consent to search the vehicle. Williams Decl. (doc. no. 51) ¶ 3. Defendant argues that Officer Williams reasonably should have completed the process of dealing with the alleged Vehicle Code violations within five minutes, and that the "casual conversation" and inquiries prolonged the traffic stop beyond the time reasonably required to issue a ticket. Reply (doc. no. 58) at 4. Defendant cites the CAD dispatch recording which indicates that the probation/parole check on Lawson came back clean at approximately seven minutes into the stop. Mot. Traffic Stop (doc. no. 43) at 12-13. Defendant also states that approximately 20 minutes after the stop was made, Officer Williams radioed to dispatch that he had entered the trunk of the vehicle and located a license plate. *Id.* at 13. The parties did not submit the CAD records to the court, but the government does not dispute defendant's representation about this time frame. Defendant states that he estimates that the duration of the traffic stop and search of his car was about 20 minutes. Lawson Decl. (doc. no. 60) ¶ 12.

Ninth Circuit authority recognizes that "officers are not required to move at top speed when executing a lawful traffic stop," and are not prohibited from taking a brief pause to ask a few questions unrelated to the purpose of the traffic stop, as long as the traffic stop is not unreasonably prolonged under the totality of the circumstances. See *United States v. Turvin*, 517 F.3d 1097, 1101-02 (9th Cir. 2008) (holding that an officer who stopped writing out traffic citations to turn on a tape recorder and ask the defendant

1 about drugs and for consent to search his vehicle did not unreasonably prolong the traffic  
2 stop). In *Turvin*, the total duration of the traffic stop up to the point when the defendant  
3 consented to the search was about 14 minutes. *Turvin*, 517 F.3d at 1101. The court in  
4 *Turvin* concluded that this was no longer than an ordinary traffic stop and that evidentiary  
5 findings were not necessary “to demonstrate the sensible observation that fourteen  
6 minutes is not unreasonably long for a traffic stop.” *Id.* Similarly, in *United States v.*  
7 *Mendez*, 476 F.3d 1077 (9th Cir. 2007), the court held that the officers’ questioning did  
8 not unreasonably prolong the duration of a lawful stop, where the entire encounter  
9 between the police and the motorist up to the time of the arrest and search took  
10 approximately eight minutes, and the questioning occurred while the police detective was  
11 running an identification check. *Mendez*, 476 F.3d at 1079-81.

12 Here, the record demonstrates that Officer Williams’s questioning was of some  
13 duration up to 20 minutes after the initial stop, at which point defendant was sitting on the  
14 curb and Officer Williams had searched the trunk of defendant’s car and reported finding  
15 a license plate inside. Mot. Traffic Stop (doc. no. 43) at 13. Although there is a factual  
16 dispute as to the duration of the stop prior to the search of the car, even if taking  
17 defendant’s estimate as accurate, a 20-minute traffic stop, like the 14-minute traffic stop  
18 in *Turvin*, is not unreasonably prolonged under the circumstances. In particular, Officer  
19 Williams ran a probation/parole check during the time that Officer Williams questioned  
20 defendant and asked for consent to search, as in *Mendez*, and had to wait about 7  
21 minutes for the results.

## 22 2. Reasonable Suspicion

23 Even if it could be said that the questioning by Officer Williams unreasonably  
24 prolonged the traffic stop, the questioning was justified by reasonable suspicion that  
25 defendant was involved in other criminal activity. See *Turvin*, 517 F.3d at 1099-1100;  
26 *Mendez*, 476 F.3d at 1081.

27 Here, as in *Turvin*, it was reasonable for Officer Williams to ask questions based  
28 on information learned during the course of the stop. *Turvin*, 517 F.3d at 1102. Officer



Williams' questions and request to search were reasonable based on facts learned and observations made after he stopped defendant. As stated in his report, Officer Williams detailed three factors supporting reasonable suspicion of criminal activity to further investigate: (1) absence of luggage, given that defendant stated that he spent the last three weeks in Los Angeles; (2) defendant's stated employment as an entertainer and iron worker, jobs which did not usually pay enough to afford the expense of a Bentley; and (3) Officer Williams's knowledge that Interstate 580 was a well-known drug trafficking route from Los Angeles to San Francisco. Arrest Report (doc. no. 51) at LAWSON-0031. Courts have consistently held that inconsistent, vague or evasive stories about travel plans are suspicious factors, such as taking a long distance trip by automobile for only a short stay. *United States v. Rojas-Millan*, 234 F.3d 464, 470 (9th Cir. 2000). See also *United States v. Garcia*, 205 F.3d 1182, 1185 (9th Cir. 2000). Viewed under the totality of the circumstances, Officer Williams's observations supported an articulable and reasonable suspicion to continue questioning defendant.

#### **D. De Facto Arrest**

Defendant contends that he was detained during the traffic stop in such a manner as to constitute a de facto arrest unsupported by probable cause:

Immediately upon approaching the car, Officer Williams removed any question that Mr. Lawson was free to leave by demanding that he hand over his keys and roll down all the windows. Thereafter, Officer Williams engaged in an accusatory line of questioning wholly unrelated to the purported purpose of the stop. After crudely insinuating that the Bentley was too nice of a vehicle for a man like Lawson to drive, Williams ordered Lawson out of the vehicle, removed his belongs from his person, and made him sit on the curb and watch as he rifled through Lawson's belongings. Detective Al Grejada stood over Lawson as this occurred. Mr. Lawson was outnumbered, intimidated by an undue show of authority, and uninformed of his rights.

Mot. Traffic Stop (doc. no. 43) at 14-15.

To determine whether a detention exceeds the bounds of an investigatory stop and amounts to a de facto arrest, courts look to the totality of the circumstances. *United States v. Ricardo D.*, 912 F.2d 337, 342 (9th Cir. 1990). "Whether an arrest has

1 occurred depends on all the surrounding circumstances, including the extent to which  
2 liberty of movement is curtailed and the type of force or authority employed.” *Id.* at 340  
3 (quoting *United States v. Robertson*, 833 F.2d 777, 780 (9th Cir. 1987)). In *Ricardo D.*,  
4 cited by defendant, the Ninth Circuit held that the coercive nature of an investigatory stop  
5 amounted to a de facto arrest lacking probable cause, where the suspect was confronted  
6 by several officers with high beams of a police car shining in his face, and “the suspect  
7 was sixteen, taken by the arm, told not to run, and placed in the back of the police car.”  
8 *Id.*

9 Here, defendant’s traffic stop did not have the coercive nature that was found in  
10 *Ricardo D.* to transform the stop into an arrest. Officer Williams was alone when he  
11 approached defendant, not in the presence of multiple officers, and did not call for  
12 backup until obtaining consent to search the car; nor was defendant held in the back of  
13 the patrol car or handcuffed. Under the circumstances presented here, the traffic stop  
14 and questioning, leading up to the search of defendant’s person and his car, did not  
15 amount to a de facto arrest.

#### 16 **E. Search of Defendant’s Person and Vehicle**

17 Defendant seeks suppression of all the evidence seized from his person and from  
18 inside the Bentley. He contends that he did not consent to Officer Williams’s search of  
19 his person or his vehicle, and that Officer Williams did not have probable cause to  
20 conduct the search. As set forth below, the court finds contested issues of fact on the  
21 question whether defendant gave consent to search, and GRANTS defendant’s request  
22 for an evidentiary hearing on that issue.

##### 23 **1. Factual Dispute re: Consent**

24 Officer Williams reported that defendant gave consent to search his person and  
25 his vehicle:

26 I then asked Lawson if he had anything illegal on him or in his  
27 vehicle. Lawson told me he did not have anything illegal on  
28 him. I then asked him if he would mind if [sic] searched his  
him [sic] and his vehicle. Without hesitation, Lawson stated  
“Go ahead, I don’t have anything in my car.”

Williams Decl., Ex. A-1 (doc. no. 51) at LAWSON-0031. *See United States v. Vongxay*, 594 F.3d 1111, 1119 (9th Cir. 2010) (“The government bears the burden of proving consent, and it must prove that the consent was freely and voluntarily given.”) (citations omitted). Furthermore, to corroborate Williams’s police report, the government submitted a CD recording of the questioning at the police station, where Officer Williams asked defendant, “as far as talking at the window, you gave me consent to get into the car?” and Lawson responded, “Right. I don’t need this . . . I’m so pissed off right now, I don’t even feel like going through none of this right now.” Williams Decl. ¶ 5 and Ex. A-4 (CD) (doc. no. 51).

Defendant denies that he gave consent and argues generally that “he would have had to have taken leave of his faculties to give his consent to search.” Reply (doc. no. 58) at 8. In his late-filed declaration, defendant denies ever giving anyone consent to search his vehicle. Lawson Decl. (doc. no. 60) ¶ 11.

Defendant’s statements to Officer Williams, both as recorded in the police report and on tape at the police station, tend to establish that defendant consented to a search of his car, but are ambiguous as to whether defendant consented to a search of his person. *See Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (“The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of “objective” reasonableness - what would the typical reasonable person have understood by the exchange between the officer and the suspect?”). In light of defendant’s express denial that he gave consent to search his car or his person, defendant has sufficiently demonstrated a contested issue of fact on whether he gave consent to the search, either of his person or of his car. *United States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000) (“An evidentiary hearing on a motion to suppress need be held only when the moving papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that contested issues of fact exist.”). As the factual dispute over consent does not challenge an officer’s sworn statement in support of a search warrant affidavit, Officer Williams’s factual statements are not entitled to a presumption of validity

1 under *Franks*, and defendant is not required to make a preliminary showing of falsity and  
2 materiality to be entitled to an evidentiary hearing.

3 Given the factual dispute whether defendant consented to a search, the court finds  
4 that an evidentiary hearing is warranted on whether defendant gave consent to search  
5 his person or his car.

## 6 **2. Probable Cause**

7 The government argues in the alternative that even if defendant did not give  
8 consent to search the Bentley, Officer Williams had probable cause to search, justifying  
9 the warrantless search of both defendant's person and his car. To establish probable  
10 cause, the government must show a fair probability that contraband or evidence of a  
11 crime was in the place to be searched. *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

12 Here, the government asserts that Officer Williams acted based on directions  
13 given to him by Detective Grejada, who in turn received information from DEA Special  
14 Agent Pettie Winston. Agent Winston submitted the probable cause affidavit in support of  
15 the application to install a GPS tracking device on defendant's Bentley. See Sealed  
16 Winston Affidavit. Agent Winston also attests to the following facts:

17 During the evening on February 5, 2015, agents were  
18 monitoring GPS information from a court-authorized GPS  
19 tracking device placed on Lawson's 2006 white Bentley ("the  
20 Bentley"). Agents observed that the tracker data for the  
21 Bentley showed that the defendant had driven from the Bay  
22 Area to the Los Angeles area.

23 On February 6, 2015, at approximately 7:15 a.m., I was  
24 monitoring the GPS tracker data for the Bentley. Based on  
25 the GPS information, it appeared that Lawson was driving  
26 back to the Bay Area from Los Angeles. I placed a telephone  
27 call to Livermore Police Detective Al Grejada and informed  
28 him about the DEA's investigation into Lawson. I told  
Detective Grejada that the DEA currently had an active GPS  
tracker on the Bentley and I anticipated that Lawson would  
likely drive through the Livermore area on Interstate 580. I  
provided Detective Grejada with a detailed description of the  
Bentley. I also told Detective Grejada that I anticipated that  
the Bentley would contain illegal drugs or drug proceeds. I  
also requested that Detective Grejada have an officer from the  
Livermore Police Department perform a traffic stop on the  
Bentley if it drove through his jurisdiction.

1 Opp. to Mot. Suppress Unlawful Stop and Prolonged Detention, Ex. B (“Winston Decl.”)  
2 ¶¶ 3-4 (doc. no. 51). The government argues that under the collective knowledge  
3 doctrine, the information known to Agent Winston is imputed to Officer Williams, based  
4 on Agent Winston’s communication with the Livermore Police requesting a traffic stop.  
5 *United States v. Villasenor*, 608 F.3d 467, 475 (9th Cir. 2010) (recognizing that the  
6 collective knowledge doctrine applies “where an officer with direct personal knowledge of  
7 all the facts necessary to give rise to reasonable suspicion directs or requests that  
8 another officer conduct a stop, search or arrest.”) (internal marks omitted) (quoting *United*  
9 *States v. Ramirez*, 473 F.3d 1026, 1033 (9th Cir. 2007)).

10 Defendant does not appear to dispute the applicability of the collective knowledge  
11 doctrine to impute Agent Winston’s knowledge to Officer Williams, but defendant  
12 contends that the information possessed by Agent Winston did not rise to the level of  
13 probable cause to search his person or his vehicle. Defendant argues persuasively that  
14 even if Agent Winston believed there was probable cause to install a GPS tracker on  
15 defendant’s Bentley, the record does not reflect any additional information, since the time  
16 when the tracking warrant was issued, to support probable cause to search the Bentley,  
17 other than the fact that defendant was returning from Los Angeles at the time of the traffic  
18 stop. The record before the court on the information known to Agent Winston is limited to  
19 Agent Winston’s declaration and the December 29, 2014, search warrant affidavit for the  
20 GPS tracker on the Bentley, which established probable cause to believe that defendant  
21 was engaged in drug trafficking and that tracking his car would provide evidence of illegal  
22 activity in December 2014 when the search warrant was issued, but does not articulate  
23 the factual basis for probable cause to believe that evidence of criminal activity would be  
24 found on defendant’s person or in the Bentley in February 2015.

25 **a. Search of Defendant’s Pants Pockets**

26 With respect to Officer Williams’s search of defendant’s pants where cash was  
27 located in the right front pocket and left rear pocket, the government does not specifically  
28 address whether there was probable cause to search defendant’s person. Agent

Winston's declaration makes a conclusory statement that "I anticipated that the Bentley would contain illegal drugs or drug proceeds," but falls short of stating a belief that defendant would be carrying drug proceeds on his person or setting forth facts to support that belief. Winston Decl. ¶ 4 (doc. no. 51). The only evidence linking defendant to drug trafficking between Los Angeles and the Bay Area was the confidential informant's statements during a December 9, 2014 interview, stating that defendant told the CI on November 30, 2014, that he was driving to Los Angeles to pick up bricks, and that he was coming back to Hayward that same day. The government offers no further evidence discovered during the course of the investigation to support probable cause that drugs or drug proceeds would be found on defendant 2 months later, when he was stopped on his way back from Los Angeles on February 6, 2015, or any evidence that every time that defendant drove to Los Angeles he went to obtain drugs or would carry large sums of money. Given this time gap, a sufficient nexus is lacking between the information set forth in the December 29, 2014 affidavit and the February 6, 2015 traffic stop to support a fair probability that evidence of a crime would be found on defendant's person. See *United States v. Crews*, 502 F.3d 1130, 1136-37 (9th Cir. 2007) ("For probable cause, an affidavit must establish a reasonable nexus between the crime or evidence and the location to be searched."). On this record, the government has not met its burden to show probable cause to search defendant's person.

**b. Search of Bentley**

Under the automobile exception to the warrant requirement, police officers may "conduct a warrantless search of a vehicle if they have probable cause to believe that it contains contraband." *United States v. Pinela-Hernandez*, 262 F.3d 974, 977-78 (9th Cir. 2001). "A determination of probable cause is based on the 'totality of the circumstances' known to the officers, and because the officers were acting in concert in this case, we 'look to the collective knowledge of all the officers involved in the criminal investigation.'" *United States v. Fowlkes*, 804 F.3d 954, 971 (9th Cir. 2015) (quoting

1 *United States v. Ramirez*, 473 F.3d 1026, 1032–37 (9th Cir. 2007); *United States v.*  
2 *Smith*, 790 F.2d 789, 792 (9th Cir. 1986)).

3 As discussed above, the only evidence in the record linking defendant to drug  
4 trafficking between Los Angeles and the Bay Area was the confidential informant's  
5 statements during a December 9, 2014 interview, stating that defendant told the CI on  
6 November 30, 2014, that he was driving to Los Angeles to pick up bricks, and that he  
7 was coming back to Hayward that same day. The government offers no further evidence  
8 discovered during the course of the investigation to support probable cause that drugs or  
9 drug proceeds would be found on defendant over 2 months later, when he was stopped  
10 on his way back from Los Angeles on February 6, 2015. Without offering evidence that  
11 the DEA may have obtained between December 9, 2014 and February 6, 2015, the  
12 government does not establish a sufficient nexus between defendant's car and the past  
13 indicia of drug trafficking activity to support a fair probability that evidence of a crime  
14 would be found in the Bentley.

15 In explaining why he wanted to conduct the consent search, Officer Williams  
16 stated, "I wanted to search the car based on the following factors: Lawson was traveling  
17 to and from the Los Angeles Area to the Bay Area without any luggage, his employment  
18 usually not paying enough for him to afford the vehicle he was driving and knowing that  
19 the highway 580 corridor was being a known drug trafficking route from LA to San  
20 Francisco." These observations supported reasonable suspicion to justify further  
21 investigation, but in light of the facts in the record, these suspicious factors do not  
22 establish probable cause to search the car without consent.

### 23 **c. Evidentiary Hearing**

24 On the present record, the warrantless search of defendant's person and car, in  
25 the absence of consent to the search, was not supported by probable cause. Because it  
26 is the government's burden to show probable cause, and defendant raised the factual  
27 dispute in an untimely declaration, the court will grant an evidentiary hearing to establish  
28 probable cause for the warrantless search of defendant's person and car. The



government may, if it chooses, attempt to establish probable cause for the search at the evidentiary hearing to be held on the limited factual disputes raised by defendant.

## **V. Motion to Suppress Incriminating Statements**

### **A. Legal Standard**

*Miranda* requires that a suspect be advised of his Fifth Amendment rights before a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966). A suspect who has not been formally taken into police custody can nevertheless be considered “in custody” for purposes of *Miranda* if the suspect has been deprived of his freedom in any significant way. *Id.* at 444. “Whether a suspect is in custody turns on whether there is a ‘formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.’” *United States v. Crawford*, 372 F.3d 1048, 1059 (9th Cir. 2004) (en banc) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)) (internal marks and citation omitted).

To determine whether a suspect was in custody, a court must first examine the totality of the circumstances surrounding the interrogation. *Thompson v. Keohan*, 516 U.S. 99, 112 (1995). The court must then ask whether a reasonable person in those circumstances would have felt he or she was not at liberty to terminate the interrogation and leave. *Id.* The Ninth Circuit has identified five factors relevant to the custody determination: (1) the language used to summon the individual; (2) the extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual. *United States v. Bassignani*, 575 F.3d 879, 883 (9th Cir. 2009) (quoting *United States v. Kim*, 292 F.3d 969, 974 (2002)).

Ordinarily, *Terry* traffic stops are considered non-custodial for purposes of *Miranda*. *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). A person detained as a result of a traffic stop is not in custody because such detention does not significantly impair the detained person’s free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights. *Id.*

**B. Discussion****1. Custody Determination**

Defendant moves to suppress all statements attributed to him at the scene of the traffic stop as well as at the police station and the fruits thereof on the ground that the statements were made in violation of defendant's privilege against self-incrimination and the right to assistance of counsel. Mot. (doc. no. 44). Defendant argues that the statements were obtained from him as the result of a custodial interrogation without *Miranda* warnings.

With respect to the statements made by defendant, the government only intends to introduce those statements made prior to the search of the vehicle. Regarding the statements made after the search of the vehicle and at the Livermore Police Station, the government states that it does not intend to use those statements at trial. Therefore, the government is precluded from introducing those statements at trial and the court proceeds to consider defendant's motion to suppress only with respect to the statements made before Officer Williams conducted the search of the vehicle. Those statements, as described in Officer Williams's arrest report (doc. no. 51 at LAWSON-0031), are as follows:

- Officer Williams informed defendant of his reason for the enforcement stop and defendant responded that he was unaware of how fast he was driving.
- Officer Williams then asked defendant where he was coming from and defendant informed that he was coming from the Los Angeles area on his way to Hayward.
- Officer Williams asked what defendant was doing in Los Angeles and he answered that he works there as an entertainer at clubs and that he is an iron worker in the Bay Area.

- 1 • Officer Williams further inquired how long defendant had been in
- 2 Los Angeles and defendant replied he had been there for three
- 3 weeks.
- 4 • Officer Williams told defendant that for having been in Los Angeles
- 5 for three weeks, he did not see any luggage in the vehicle;
- 6 defendant responded by pointing to a Louis Vuitton duffle bag that
- 7 was lying in the front passenger seat and saying that he had been
- 8 driving back and forth so he didn't take too much with him.
- 9 • During the conversation, Officer Williams complimented defendant
- 10 on how nice his vehicle was and how clean he kept it. Officer
- 11 Williams then stated that defendant must have paid a fortune for
- 12 the vehicle because it was a Bentley, and defendant responded
- 13 that it was only a 2006 model and that he pays around \$470 a
- 14 month for it.
- 15 • Officer Williams asked defendant if he was on parole or probation
- 16 and defendant responded that he had not been in trouble in a long
- 17 time. Defendant further explained that he had been arrested in Los
- 18 Angeles and San Jose a while ago.
- 19 • Officer Williams then asked if defendant had anything illegal on him
- 20 or in his vehicle, and defendant responded that he did not have
- 21 anything illegal on him.
- 22 • Officer Williams then asked defendant if he would mind if Officer
- 23 Williams searched him and his vehicle. According to the arrest
- 24 report, defendant responded, "Go ahead, I don't have anything in
- 25 my car." Arrest Report (doc. no. 51) at LAWSON-0031. Defendant
- 26 disputes that he ever gave anyone consent to enter or search any
- 27 part of his vehicle. Lawson Decl. (doc. no. 60) ¶ 11.
- 28

1 The government argues that weighing the five factors under the *Kim* test for  
2 determining whether an individual was in custody, defendant's pre-search interrogation  
3 was not custodial and did not require *Miranda* warnings. Although some of defendant's  
4 statements do not appear to be incriminatory at all, the government takes the position  
5 that some of statements demonstrate that defendant lied to Williams and are likely to be  
6 relevant at trial.

7 Applying the Ninth Circuit test under *Kim* for whether the interrogation was  
8 custodial, the court finds that defendant has sufficiently demonstrated that disputed  
9 issues of fact, with respect to the language used and manner of summoning defendant  
10 and the degree of pressure applied by Officer Williams, warrant an evidentiary hearing.  
11 The other *Kim* factors are not subject to genuine factual dispute and weigh against a  
12 finding that the interrogation was custodial.

13 **a. Factual Dispute re: Language Used to Summon**

14 The first *Kim* factor analyzes the language used to summon the individual.  
15 Defendant states that Officer Williams approached defendant with his hand on his gun,  
16 yelling at defendant to hand over his keys and to roll down all of his windows. Lawson  
17 Decl. (doc. no. 60) ¶ 8. Officer Williams's arrest report does not indicate whether his  
18 hand was on his gun when he contacted defendant, whether he ordered defendant to  
19 turn over his keys, or what his tone of voice was during the initial contact and  
20 questioning. Nor does it indicate the timing of when Officer Williams took defendant's car  
21 keys; the arrest report only indicates that Officer Williams had the car keys when he  
22 opened the trunk with the key fob. Arrest Report (doc. no. 51) at LAWSON-0032. On  
23 this record, the court cannot adequately weigh this factor under the Ninth Circuit test for  
24 custodial interrogation.

25 **b. Extent of Confrontation with Evidence of Guilt**

26 The second *Kim* factor analyzes the extent to which defendant was confronted  
27 with evidence of guilt. Defendant contends that the entire traffic stop was "pretextual," as  
28 Agent Winston suspected that defendant's vehicle would contain controlled substances.

1 Reply (doc. no. 57) at 3. In light of this, defendant argues that the line of aggressive  
 2 questioning related to his travel, employment, and contents of the vehicle was designed  
 3 to get defendant to incriminate himself. *Id.* The government asserts that when Officer  
 4 Williams made contact with defendant, he willingly answered the line of questioning about  
 5 where he was travelling from, how long he had been there, whether or not he was on  
 6 probation, and if he had anything illegal on him. Opp. (doc. no. 49) at 3. *Id.*

7 The extent to which a defendant is confronted with evidence of guilt is premised  
 8 upon whether the interrogator adopts an aggressive, coercive, or deceptive tone. *United*  
 9 *States v. Bassignani*, 575 F.3d 879, 884 (9th Cir. 1985). See *United States v. Beraun-*  
 10 *Panez*, 812 F.2d 578, 579 (9th Cir. 1987) (finding that the defendant was in custody  
 11 where the officers falsely told the defendant that a witness placed him at the scene of the  
 12 crime as a way to get the defendant to incriminate himself). Here, defendant does not  
 13 contend that Officer Williams made false suggestions of guilt to trick him into admitting  
 14 criminal conduct, as in *Beraun-Panez*, or otherwise accused defendant of drug trafficking.  
 15 Whether Officer Williams intended to ask incriminating questions, as defendant asserts,  
 16 is not relevant to determining whether defendant was in custody during the interval of  
 17 time between the initial stop and Officer Williams's search. "A policeman's unarticulated  
 18 plan has no bearing on the question whether a suspect was 'in custody' at a particular  
 19 time; the only relevant inquiry is how a reasonable man in the suspect's position would  
 20 have understood the situation." *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). In  
 21 *Berkemer*, the Court held that the defendant was not exposed to custodial interrogation at  
 22 the scene of the traffic stop, prior to being placed under arrest for driving under the  
 23 influence, where a single police officer asked the defendant a modest number of  
 24 questions and asked him to perform a simple balancing test at a location visible to  
 25 passing motorists. See *United States v. Norris*, 428 F.3d 907, 913 (9th Cir. 2005) (finding  
 26 that the defendant was not in custody when the officers "did not attempt to challenge the  
 27 defendant's statements with other 'known' facts suggesting his guilt[, but] merely asked  
 28 [him] about the allegations"). Here, as in *Norris*, there is no evidence that Officer

Williams challenged defendant's statements with facts suggesting guilt. This factor weighs against finding that defendant was in custody when he was being questioned by Officer Williams before the search of the car.

**c. Physical Surrounding of the Interrogation**

The third *Kim* factor addresses the physical surroundings of the interrogation. The Supreme Court has noted that, "the exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse." *Berkemer*, 468 U.S. at 438. Defendant asserts that the detention occurred at the intersection of Bluebell Drive and Springtown Boulevard, a location not on the side of I-580, but rather in a remote section of Livermore, California which is reached by exiting the freeway via off-ramp and traveling onto city streets to reach this location. Reply (doc. no. 57) at 3. The location of the traffic stop, identified by defendant as "the city streets in Livermore," is not in a remote or rural area where no passerby would likely be present, but is just off the freeway. Lawson Decl. (doc. no. 60) ¶ 7. The court also notes that the traffic stop occurred in broad daylight. Under these circumstances, the physical surrounding of the traffic stop weighs against a finding of custodial interrogation.

**d. Duration of the Detention**

Related to the fourth *Kim* factor, the court has determined, in Section IV.C above, that even if defendant correctly estimates that the traffic stop lasted 20 minutes up to the search of the car, the interrogation was not unreasonably prolonged. Focusing the custodial inquiry under *Kim* on the duration of the detention before Officer Williams searched the car, which lasted 20 minutes at most, defendant's traffic stop lasted less than half the time of the 45- to 90-minute interrogation at issue in *Kim*, where the court of appeals found that the defendant was in custody. *Kim*, 292 F.3d at 972. In other cases, the Ninth Circuit has found a defendant not in custody when he was questioned for "more than one hour," *United States v. Crawford*, 372 F.3d 1048, 1052 (9th Cir. 2004) (en banc), and "approximately 45 minutes." *United States v. Norris*, 428 F.3d 907, 911 (9th

1 Cir. 2005). Under *Crawford* and *Norris*, the duration of the questioning before Officer  
 2 Williams searched the car, which was at most 20 minutes, weighs against finding that  
 3 defendant was in custody.

4 **e. Factual Dispute re: Degree of Pressure**

5 The fifth *Kim* factor addresses the degree of pressure applied to the individual by  
 6 an officer during the course of a detention. “Strong but reasonable measures to insure  
 7 the safety of the officers or the public can be taken without necessarily compelling a  
 8 finding that the suspect was in custody.” *United States v. Booth*, 669 F.2d 1231, 1236  
 9 (9th Cir. 1981) (concluding that the defendant was in custody for *Miranda* purposes  
 10 where he was told that he matched the description of a suspected bank robber, he was  
 11 searched for weapons and handcuffed, and a police car was requested to transport him).

12 Defendant states in his late-filed declaration that Officer Williams approached his  
 13 vehicle with his hand on his gun, yelling at defendant to roll down the windows. Lawson  
 14 Decl. (doc. no. 60) ¶ 8. Defendant asserts that he was forced to hand over his keys and  
 15 ordered out of his vehicle. *Id.* ¶¶ 8, 9. The arrest report does not refer to whether Officer  
 16 Williams had his hand on his gun or asked defendant to hand over his keys when he  
 17 approached defendant’s car or any time during the questioning before searching the  
 18 Bentley. There is also no indication that Officer Williams expressly told defendant that he  
 19 was not under arrest. *Cf. United States v. Bassignani*, 575 F.3d 879, 886 (9th Cir. 2009)  
 20 (“We have consistently held that a defendant is not in custody when officers tell him that  
 21 he is not under arrest and is free to leave at any time.”). Further, defendant asserts that  
 22 Officer Williams ordered defendant to sit on the curb with his legs stretched out in front of  
 23 him while Officer Grejada stood over him, *id.* ¶ 10, but the evidence shows that Officer  
 24 Williams ordered defendant to sit on the curb after initiating the search and the  
 25 government concedes it will not introduce any statements from that point. Arrest Report  
 26 (doc. no. 51) at LAWSON-0031.

27 Defendant has raised a factual issue over the degree of pressure applied by  
 28 Officer Williams during the interval between the initial stop and the search of the Bentley,



1 particularly as to whether Officer Williams had his hand on his gun and whether he took  
2 defendant's keys before questioning him. The question over who had possession of the  
3 car keys could weigh heavily in determining whether a reasonable innocent person under  
4 the circumstances would conclude that after brief questioning he would be free to leave.  
5 See *Bassignani*, 575 F.3d at 887 (quoting *Booth*, 669 F.2d at 1235). Yet, the record is  
6 unclear as to the sequence of events, as well as the actions taken by Officer Williams  
7 during the course of the traffic stop, which are necessary to assess the degree of  
8 pressure applied to defendant. Accordingly, the court GRANTS defendant's request for  
9 an evidentiary hearing on this issue.

## 10 VI. CONCLUSION

11 For the reasons set forth above, the court rules as follows:

12 1. The motion to suppress evidence obtained pursuant to the Captiva tracking  
13 warrant, and for *Franks* hearing, is DENIED (doc. no. 39);

14 2. The motion to suppress evidence obtained pursuant to the Equinox tracking  
15 warrant, and for *Franks* hearing, is DENIED (doc no. 40);

16 3. The motion to suppress evidence obtained pursuant to the UPS package  
17 warrant, and for *Franks* hearing, is DENIED (doc. no. 41);

18 4. The motion to suppress evidence obtained pursuant to the Bentley GPS  
19 tracking warrant, and for *Franks* hearing, is DENIED (doc. no. 42);

20 5. The motion to disclose the identity of confidential sources and informants is  
21 DENIED (doc. no. 45).

22 6. The motion to suppress with respect to evidence seized as the result of  
23 unlawful traffic stop, prolonged detention or de facto arrest, and for evidentiary hearing, is  
24 DENIED IN PART (doc. no. 43).

25 The ruling on the motion to suppress with respect to evidence seized during the  
26 warrantless search of defendant's person and car is DEFERRED, and defendant's  
27 request for evidentiary hearing on the limited issue of whether defendant consented to  
28 the search is GRANTED (doc. no. 43).

1 If the government elects to present evidence at the evidentiary hearing on the  
2 issue of probable cause for the warrantless search, it must file notice of its election within  
3 four (4) days of the date of this order.


4 7. The motion to suppress incriminating statements is DENIED IN PART AS  
5 MOOT as to the statements made by defendant after Officer Williams initiated the search  
6 of the Bentley, in light of the government's waiver of their admissibility, and DEFERRED  
7 IN PART with respect to the statements made by defendant before the search of the car  
8 (doc. no. 44).

9 Defendant's request for an evidentiary hearing is GRANTED with respect to the  
10 limited issues of the language used by Officer Williams to summon defendant during the  
11 traffic stop and the degree of pressure applied to defendant by Officer Williams during the  
12 course of the detention, including the sequence of events and actions taken by, and  
13 commands given by, Officer Williams.

14 8. The court provides two alternative dates for the evidentiary hearing to  
15 commence at 8:30 a.m. on either date: **Monday, March 14, 2016 or Friday, March 18,**  
16 **2016.** The parties shall meet and confer and advise the courtroom deputy which date  
17 they prefer. Each side must provide a list of witnesses it anticipates calling 14 days  
18 before the hearing. Three and a half (3.5) hours will be set aside for the proceeding.

19 **IT IS SO ORDERED.**

20 Dated: February 18, 2016

21   
22 \_\_\_\_\_  
23 PHYLLIS J. HAMILTON  
24 United States District Judge  
25  
26  
27  
28